



Background Study: Professional and Ethical Standards for Parliamentarians

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Foreword

The public accountability and political credibility of Parliaments are cornerstone principles, to which all OSCE participating States have subscribed. During the Copenhagen Meeting on the Human Dimension of the Conference on Security and Co-operation in Europe in 1990, OSCE participating States declared that “the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government”. In the Paris Document (1990), they unanimously affirmed that “[d]emocracy, with its representative and pluralistic character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially”. Finally, in the Istanbul Document (1999), the OSCE participating States pledged to strengthen their efforts to “promote good government practices and public integrity” in a concerted effort to fight corruption.

The regulation of parliamentary behaviour and ethics standards is an essential element to secure public trust in the efficacy, transparency and equity of democratic systems, as well as to foster a culture of public service that favours public interest over private gains. Various regulatory models exist in parliamentary systems for conduct control, with a visible trend towards the explicit “codification,” i.e., in “Codes of Conduct”, of acceptable standards of parliamentary behaviour and ethics. Indeed, recurrent scandals and controversies in parliamentary democracies suggest that reform of ethics regulations, carried out in an inclusive, transparent and consultative manner, could be an important element in restoring trust in democratic systems of governance.

Some OSCE participating States have developed and adopted principles and codes of conduct or ethics for public officials and parliamentarians. Although rules of conduct for parliamentarians existed in the past, these rules have typically been limited to the parliamentary arena. Moreover, in recent years a deepening schism between voters and their elected representatives has become increasingly clear. For example, trust in national parliaments within the European Union fell from 57 per cent in 2007 to 31 per cent in 2012.¹

Public concerns emerging from surveys of public perceptions generally relate to financial matters and conflicts of interest, level of attendance at parliamentary sessions and committee meetings, use of privileged information and misuse of parliamentary allowances.

¹ European Commission, “Public Opinion in the European Union – First Results”, Standard Eurobarometer 77, Spring 2012, p. 13, <http://ec.europa.eu/public_opinion/archives/eb/eb77/eb77_first_en.pdf>.

In most OSCE participating States, however, the conduct of parliamentarians is regulated by articles of national constitutions and elements of several laws (related to rules for public office holders, on conflict of interest, on asset declarations and on parliament, as well as the Criminal Code or Administrative Offences Code). It can be argued that there is, therefore, no need for a separate code of conduct or ethics for members of parliaments (MPs). Indeed, many parliaments have not developed codes of conduct or ethics, preferring to rely on professional standards that exist in the “web” of laws, including their own rules of procedure and standing orders.

As of 2012, 13 parliaments in the OSCE region had adopted codes of ethics and conduct. Although the number may seem low, these parliaments represent 607.5 million people, that is to say 50 per cent of the OSCE region’s population. Moreover, the introduction of codes of conduct is a growing trend that takes into account new dynamics such as higher public expectations for public representatives, as well as politicians’ demand for increased guidance and advice in their ethical decision-making.

The 1992 Helsinki Document set out the Office for Democratic Institutions and Human Rights (ODIHR) mandate to help OSCE participating States “build, strengthen and protect democratic institutions”. In accordance with its mandate, and through its Democratic Governance programme, ODIHR delivers projects and activities that aim to raise awareness of the key role of democratic institutions – in particular parliaments – in upholding democratic principles. In this effort, ODIHR partners with parliamentary support programmes implemented by individual OSCE Field Operations.

This study was undertaken by ODIHR with the fundamental objective of developing a practical tool that draws upon academic research and practical experience in OSCE participating States. The aim of this study is to identify the main concerns and possible obstacles that need to be considered while reforming, developing and designing parliamentary standards of conduct, including, but not limited to, codes of conduct. In the fast-changing field of parliamentary ethics, this publication favours a snapshot approach of currently existing codes of conduct or ethics in the OSCE region over rigorous cross-country analysis. The cases selected are skewed towards countries where such codes exist.

This *Background Study: Professional and Ethical Standards for Parliamentarians* purports to be a comprehensive but practical publication that analyses how to build and reform systems that set professional and ethical standards for Members of Parliament (MPs) and regulate their conduct to ensure that those standards are met. The targeted audience can use this publication in different ways:

- For MPs, parliamentary staff and experts from academia and civil society, it can serve as an overview publication outlining the key issues in developing and reforming professional and ethical standards for members of parliament, drawing upon OSCE participating States’ examples and practices;
- For OSCE Field Operations, as well as other international organizations, it can provide an additional tool for delivering expertise through capacity-building, training and advice to MPs and parliamentary staff, as part of parliamentary-strengthening projects or based on direct requests from parliaments.

We hope that this publication provides a valuable overview of the topic and will kick off an innovative dialogue and exchange among OSCE participating States, international organizations, media and civil society on the subject of regulation of parliamentary conduct and ethics.

ODIHR would like to express its appreciation to Dr Elizabeth David-Barrett, who researched and drafted the *Background Study*. Likewise, the Office wishes to thank the numerous peer reviewers, researchers and staff members for their contributions, without which the *Background Study* would have not been possible. Finally, ODIHR is grateful to the field operations and parliaments in Serbia, Georgia and Albania for holding events that complemented the *Background Study* and to the experts that participated in these meetings.

Ambassador Janez Lenarčič
Director
OSCE Office for Democratic Institutions and Human Rights

Executive Summary

The OSCE Human Dimension commitments on democratic institutions state that “the participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions.”² This means that, in addition to building democratic institutions, it is critical to ensure that the individuals who work in public life adhere to certain professional and ethical standards. This applies to both mature democracies and to those where democratic institutions are still ‘under construction’. Across the OSCE region³, there is a growing consensus that professional and ethical standards for parliamentarians are critical to strengthening good governance, public integrity and the rule of law.⁴

In this regard in its 2006 *Brussels Declaration*, the OSCE Parliamentary Assembly (OSCE PA), after recognizing that good governance, particularly in national representative bodies, is fundamental to the healthy functioning of democracy, encouraged all parliaments of the OSCE participating States to:

- develop and publish rigorous standards of ethics and official conduct for parliamentarians and their staff;
- establish efficient mechanisms for public disclosure of financial information and potential conflicts of interests by parliamentarians and their staff; and

2 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, section III, para. 26, < <http://www.osce.org/odihr/elections/14304>>.

3 This study seeks to provide examples of the range of ways in which a number of OSCE participating States address the issue of professional and ethical standards for parliamentarians. Appropriate examples have been chosen from among these countries to illustrate certain points.

4 This study uses the term “professional and ethical standards for parliamentarians” as an umbrella term for the rules and norms relevant to the conduct of parliamentary work. The term is intended to include standards that are enshrined in laws and written rules, but also to recognize that some of the expectations that the public has of parliamentarians derive from a broader and less tangible concept of what constitutes “ethical” behavior. The definition of ethical conduct is likely to change over time and is shaped by local norms, as well as by a society’s aspirations for its political institutions.

- establish an office of public standards to which complaints about violations of standards by parliamentarians and their staff may be made.⁵

Indeed, the establishment and enforcement of such standards and mechanisms provides an important bridge between building the institutions of democracy and establishing a democratic political culture.

Why reform standards?

There are four main reasons why OSCE participating States might want to consider reforming professional and ethical standards for parliamentarians. These are to:

- **Fight corruption** – Robust standards and regulation can help to prevent abuse of office and other forms of corruption by: setting out clear rules for how MPs should behave, monitoring how they actually behave, and punishing transgressions. The role of an MP is complex and can raise a number of ethical dilemmas. Clear and consistently enforced standards provide greater clarity for MPs and their staff about how the public expects them to behave, especially after a scandal in which good faith mistakes have been made. Regulation should not interfere with the exercise of parliamentary duties, for example, by requiring deputies to engage in unnecessary bureaucratic procedures, but it should create a fair and stable environment in which MPs can perform their roles of representation, scrutiny and legislation;
- **Boost accountability and trust** – Clear parliamentary ethical standards improve accountability by giving the public and the media clear benchmarks against which to judge parliamentary conduct. If people believe that the system for regulating ethics is fair and effective, then they can more easily trust parliament to get on with its job, in the knowledge that any transgressions will come to light and will be punished;⁶
- **Professionalise politics** – Historically, MPs have been elected to parliament from a variety of backgrounds and occupations, and this variety is important to their ability to represent voters. However, once in parliament, MPs need to adhere to the same rules about how they conduct themselves in office. Just as lawyers and doctors have shared standards across the profession, MPs need clarity about the standards expected of them. Clear standards can also help to unite MPs, allowing them to overcome the obvious political differences and to build a sense of collegiality. They can also boost the prestige of the office, helping to attract high-calibre individuals to the role; and
- **Meet international standards** – The introduction of codes of conduct for public officials, promoting integrity, honesty and responsibility, also demonstrates a country's commitment to the implementation and respect of shared international standards and norms. Compliance with such norms can also be important to meeting the conditions for joining international associations or accessing aid.

5 OSCE Parliamentary Assembly, "Brussels Declaration of the OSCE Parliamentary Assembly and Resolutions Adopted at the 15th Annual Session", Brussels, 2006, pp. 32–33, <http://www.oscepa.org/images/stories/documents/declarations/2006_-_brussels_final_declaration_-_english.2326.pdf>. (OSCE PA)

6 The argument can also be made, however, that conduct regulation may damage public trust in politicians by bringing into public view scandals that otherwise remain hidden. See European Commission Study, European Institute of Public Administration, "Regulating Conflicts of Interest for Holders of Public Office in the European Union", 2007, p. 121, <http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf>. (EC EIPA)

How to reform standards

Many parliaments across the OSCE region are seeking to reform professional and ethical standards. This study is about how to set up systems to ensure that members behave *professionally*, i.e., that they effectively undertake a specialized set of tasks intrinsic to the role, and *ethically*, i.e., in line with values regarding what constitutes right and proper behaviour for an MP.

It is not possible to prescribe a single one-size-fits-all solution for improving parliamentary ethical standards. The most effective strategies are those that take into account specific institutional and political conditions. Reformers might find it helpful to start by identifying the key risks or problems in their political systems as well as taking into account international standards, the constitutional context and existing laws. Such an exercise can help with assessing what type of tools and practices are needed in that particular context. This study shares experiences about how systems of parliamentary standards operate across the OSCE region and is intended as a resource for reformers.

There are several key instruments for regulating different aspects of parliamentary conduct:

- **Codes of conduct**⁷ – A code of conduct sets out guidelines for the behaviour of members of a particular profession. Such codes play various roles in different constitutional contexts. Some are detailed lists of rules embedded in legally binding documents such as parliamentary rules of procedure, as with the German and Latvian codes. Others are simply brief statements of shared values, such as the United Kingdom House of Commons Code (although the latter is accompanied by a lengthy guide). Codes are not essential and many countries regulate parliamentary standards effectively without adopting codes. However, they can be a useful tool for collating all of the rules in one place, providing a benchmark against which to judge conduct, and setting out general values and principles. Moreover, in all countries, the process of drafting such a code can be highly beneficial, since it tends to initiate a broad discussion about what professional and ethical standards can – and should – be expected of parliamentarians. Drafting a new code can, therefore, be an excellent way of initiating a process of reforming standards;
- **Registers of interests and asset declarations** – One of the main threats to professional and ethical conduct for parliamentarians arises from “conflicts of interest”, i.e., situations where MPs must choose between the duties and demands of their professional role and their own private interests. Most parliaments have rules about what interests MPs can possess simultaneously while holding their office. Certain types of interests tend to be allowed but, to guard against conflicts, MPs can be asked to provide information about their assets and interests. This data is either monitored by the parliament or publicly disclosed. The advantage of public disclosure is that it allows the media and civil society to assess whether the work of MPs is subject to influence by their private interests. However, concerns related to privacy infringements need to be addressed with sensitivity to the local context;
- **Rules about allowances and expenses** – MPs need adequate resources to carry out their duties effectively and, hence, need allowances from the state to support their local offices, to fund travel and other necessary expenses. However, MPs should exercise responsibility

7 The terms “code of conduct” and “code of ethics” are sometimes used interchangeably and may have different connotations in different languages. This study uses the term “code of conduct”, but do not intend to exclude systems that prefer the other term.

in the way they spend public money. Parliamentary resources should be used only for public work, and should in no circumstances be used for political party campaigning or personal benefit. MPs' freedom to use allowances needs to be regulated so as to avoid abuses and inspire the confidence of the public; and

- **Other aspects of conduct** – The reform of rules also provides an opportunity to incorporate and address considerations relating to relations with lobbyists, demeanour, parliamentary language, equal treatment relating to gender or ethnicity, and standards for attendance. Rules may also give guidance on how to manage the representation of constituents. It may also be necessary to regulate the post-parliamentary employment of MPs, given their potential after leaving office to take private-sector jobs that pose conflicts of interest.

Monitoring and enforcement

Once the rules are in place, it is necessary to set up clear and consistent procedures for monitoring breaches of the rules, investigating whether misconduct has occurred and punishing offenders. One major question to consider is whether parliament should be trusted to regulate itself, for example through a special ethics committee, or whether investigations should rather be entrusted to an external regulator, such as an anti-corruption agency.

Self-regulation has traditionally been preferred, largely because of the need to protect parliaments' independence from the executive branch. Yet recent years have seen a move towards external regulation, partly reflecting a loss of confidence in parliaments' ability to regulate themselves following a succession of scandals. External regulation is often seen as more credible and less vulnerable to politicisation. Whichever approach is adopted, it is important that the body responsible for enforcing professional ethical standards in parliament is regarded as legitimate and that its procedures are transparent. Any sanctions imposed should be proportionate to the severity of the misconduct.

Initiating and sustaining reform

Systems to regulate the ethical conduct of parliamentarians work best when MPs themselves feel "ownership" of the system. This is best achieved by having an open and consultative process to discuss what is not working and design solutions to address concerns. Working groups established to lead reform should be selected through a fair and transparent process and should lead by example in making their work transparent and declaring their members' special interests, even beyond the requirements of the main parliament. Ideally, they should be led by or include individuals who are widely regarded as ethical leaders and who inspire public confidence. Any form of regulation implies administrative costs, which should be taken into account by reformers when devising new rules. However, major improvements to parliamentary standards can be achieved through transparency and accountability initiatives, which are highly cost-effective.

It is essential to keep the rules operational and flexible. For parliamentarians, this means ensuring that new members are briefed on the rules when they enter parliament, building in regular opportunities to review and update the rules, and providing support to members who seek advice on the rules. It is also critical to educate the public and the media to encourage them to hold MPs to account and also to set reasonable boundaries on the scrutiny of MPs' personal lives, so that MPs can retain some privacy.

Table 1: Key elements of a parliamentary standards system

Institution	Description	Objectives	Points to consider
Code of conduct	Written list of principles and/or rules to guide conduct	Provide clarity to MPs about expectations. Facilitate accountability	<ul style="list-style-type: none"> • Compatibility with existing laws? • Principles or rules? • Accompanying guide to the code of conduct?
Registry of Interests	Centralized list of the private interests of MPs that could influence or appear to influence their decisions	Ensure that private interests do not influence MPs' judgement	<ul style="list-style-type: none"> • What needs to be registered? • Who will get access? • What about privacy concerns?
Declaration of Assets	Statement listing total assets of an individual MP	Deter corruption by allowing scrutiny of assets gained while in public office	<ul style="list-style-type: none"> • How are declarations submitted (electronically, paper, etc)? • Should declarations be publicly disclosed? • Do family members need to make declarations? • Can declarations be checked against tax returns?
Expenses and allowances	Rules about what expenses are permissible and accounting	Ensure that public money is not wasted or used to supplement income	<ul style="list-style-type: none"> • Should allowances differ for different types of MPs? • Should MPs' expenditures be centralized?
Conduct in the chamber	Rules about conduct within debates, respect for colleagues, language to be used or avoided, dress code	Ensure that parliament operates professionally and is able to perform its duties, that there is an atmosphere of respect for one's colleagues	<ul style="list-style-type: none"> • Should demeanour be regulated? • Are informal practices in the chamber inhibiting debate? • Are gender and ethnic equality upheld?
Rules about relations with lobbyists	Rules and restrictions on the kinds of relations that MPs can have with lobbyists and interest groups	Ensure that MPs do not abuse office, receiving money from lobbyists in exchange of political favours	<ul style="list-style-type: none"> • What kind of information should be provided in a registry of lobbyists? • What is the balance between good lobbying and improper political influence?

Part One: Preparing to Reform Parliamentary Ethical Standards

This study is about how to build reform and uphold professional and ethical standards for MPs. These particular standards might be embodied in formal institutions, such as the constitution, specific laws and written rules, but they also comprise informal institutions, such as norms and traditions.

Section 1.1 considers the main reasons to regulate parliamentary ethical standards and the conduct of MPs, with **Section 1.2** pointing out the limits of regulation.

Section 1.3 evaluates the issue of immunity for parliamentarians, and how this concept can be rationalized into an ethical code of conduct for MPs.

To conclude, **Section 1.4** examines the general framework that defines ethical standards, identifying four different layers of normative sources: international norms, constitutional norms and national law, parliamentary norms, and social norms and the role of political parties.

1.1 Reasons to Regulate Conduct

The regulation of ethical standards plays a critical role in ensuring that the conduct of MPs is not merely in line with a country's constitution or laws but also meets public *expectations* about how parliamentarians should behave. After all, voters often hold MPs to account for failing to live up to ethical standards, even when they have not explicitly broken a law.

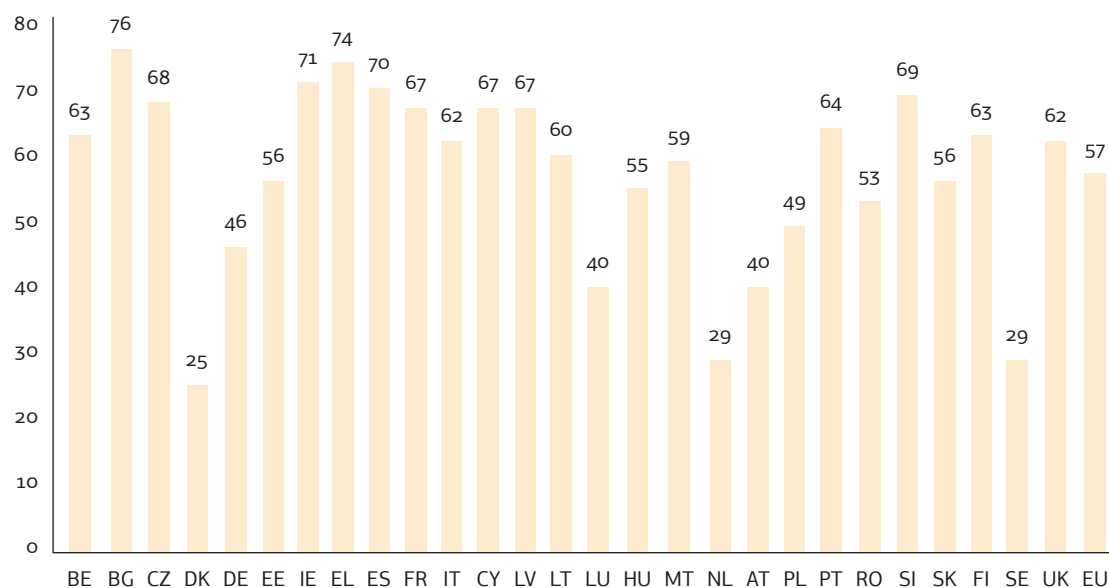
Perhaps the primary reason why it is important to establish and regulate parliamentary ethical standards is to raise the degree of professionalism into politics. Many professions have systems of standards to guide the conduct of their members. These rules are often written down in codes of conduct, which members are required to sign or take an oath to uphold on upon entering the profession. Doctors, for example, have been taking the Hippocratic Oath since antiquity as a commitment to executing their medical duties in an ethical way. Just like members of other professions, MPs too should agree to behave *professionally*, i.e., to effectively carry out a specialized set of tasks, and *ethically*, i.e., in line with values regarding what constitutes proper behaviour for an MP. This is nothing new. Pericles made the Athenian Code a criti-

cal foundation of ancient Greek politics and culture.⁸ However, the job of being an MP entails special responsibilities. Members of parliament are elected to serve the public interest, but in order to do so they need power to represent their constituencies, and access to exercise their oversight role in various forms. With such power comes the potential to abuse their position and serve private interests rather than the public interest.

There are several types of unethical political conduct that a parliamentary system should guard against. Conflicts of interest arise when MPs have private interests that “improperly influence the performance of their official duties and responsibilities.”⁹ A conflict of interest might occur, for example, if a member owns a company in the construction sector and, in his or her role as a legislator, is required to vote on a new law regulating safety in construction. There is a concern that he or she will put his or her desire to earn income from the company above his or her duties as a legislator to serve the public interest. Bribery occurs when an MP accepts a gift or payment in return for voting in a certain way on a bill, or raising an issue in a debate. MPs might also be accused of abuse of office or misuse of public funds if they use their powers or parliamentary resources in ways that serve private interests at the expense of the public interest. MPs that use their power or public resources specifically to benefit their friends or family might be guilty of nepotism.

A recent Eurobarometer survey found that such forms of corruption are perceived to be widespread among national politicians in many European Union countries (see Figure 1 below).

Figure 1. Perceptions of corruption among national politicians in the European Union¹⁰



8 Gilman, Stuart *Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons*, (Washington, DC: PREM/World Bank), 2005, p. 3.

9 OECD, “Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences”, 2003, and OECD, *Asset Declarations for Public Officials: a Tool to Prevent Corruption*, (OECD Publishing: 2011), p.28, <<http://dx.doi.org/10.1787/9789264095281-en>>. (OECD Asset Declarations)

Note: Conflicts of interest are not necessarily forms of corruption, but they represent a risk of corruption.

10 The question asked was “Do you think that the giving and taking of bribes, and the abuse of positions of power for personal gain, are widespread among any of the following?” (Options: Politicians at national level; Politicians at regional level; Politicians at local level). The country acronyms are the ISO 3166 Standard Country Codes. See: European Commission, “Attitudes of Europeans towards Corruption”, 2009, Special Eurobarometer 325, p. 28, <http://ec.europa.eu/public_opinion/archives/ebs/ebs_325_en.pdf>.

It is essential that the public has confidence in parliament and that any apparent breaches of trust are investigated and, if necessary, punished. Pressures to reform parliamentary standards or introduce new rules often arise because of a scandal whereby an individual MP – or group of MPs – is seen to have breached public trust. Political scandals – in particular those regarding ethics – can be very damaging to perceptions of legitimacy in a democracy, but they can also open up windows of opportunity to reform or tighten regulation of parliamentary conduct.¹¹

“Why is it necessary to elaborate a code of conduct? Very often, elected officials forget that they should work for public instead of personal interests. Very often, MPs forget that they shouldn’t support interests of some individuals or groups of individuals wanting to achieve some personal or indirect benefit. This code should remind them of that.”
(Nermina Kapetanović MP, Parliament of Bosnia and Herzegovina)

[Comments made at an OSCE Conference: Standards of Ethics and Conduct for Parliamentarians in Belgrade, November 2011]

Indeed, scandals have been critical in prompting the reform of parliamentary standards in many countries. In the United States, the Watergate scandal in 1974 helped pave the way for the Ethics in Government Act of 1978, which set out requirements for financial disclosure by employees and officials in the legislature, executive and judiciary. In the United Kingdom, the 1996 “cash for questions” affair – where MPs were found to have taken cash bribes for raising certain questions in parliament – prompted the Prime Minister to ask the Committee on Standards in Public Life to investigate standards in public life in Britain. The resulting “Nolan Principles” informed the work of the House of Commons Committee on Standards and Privileges as it drafted the first code of conduct for deputies in the United Kingdom.¹²

More recently, in January 2011, three Members of the European Parliament (MEPs) were caught on camera appearing to be willing to move amendments in return for cash. One of them reportedly boasted that he was earning hundreds of thousands of euro from other lobbyists.¹³ In the European Parliament, the scandal led to the drafting of a new code of conduct, which explicitly bans the acceptance of rewards in exchange for influencing votes. The code, which came into effect in January 2012, also requires MEPs to declare activities that might constitute a conflict of interest, bans gifts worth more than 150 euros, and sets up a five-member committee to advise on the code and investigate alleged breaches.¹⁴ Possible sanctions include forfeiting daily subsistence allowances for two to 10 days, suspension from parliamentary work – apart from the right to vote – for two to ten days, and even the loss of an elected parliamentary role (e.g., chair of a committee).¹⁵

11 Stapenhurst, Frederick and Pelizzo, Riccardo, ‘Legislative Ethics and Codes of Conduct’, *WBI Working Papers*, (Washington DC: World Bank Institute, 2004), p. 4.

12 As a result, the Committee adopted the so-called “Nolan Principles” for public life. These principles were seen as being essential to “all aspects of public life”, and include: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. More information can be found at <http://www.public-standards.gov.uk/About/The_7_Principles.html>.

13 *The Sunday Times*, “Euro MPs exposed in ‘cash-for-laws’ scandal”, 20 March 2011, <<http://www.thesundaytimes.co.uk/sto/news/insight/articles582604.ece>>.

14 The Code is Annex 1 to European Parliament, “Rules of Procedure of the European Parliament”, Brussels, 2012, <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20120110+ANN-01+DOC+XML+Vo//EN&language=EN&navigationBar=YES>>.

15 The right to vote is retained because its removal would interfere with the representation of voters and might also alter a parliamentary group’s majority.

The same scandal also prompted reforms in Austria. One Austrian expert commentator noted:

*"[the European Parliament case] exposed weaknesses in the Austrian system since this action would not have been punishable under Austrian law had the MEP been an MP in the national parliament."*¹⁶

Shortly after the scandal, one of the political parties in the Austrian Parliament issued an ethics declaration condemning politicians who act in their own personal financial interests and exhorting them to instead act out of conviction and be driven by ideals; the party has since upgraded this to a new party-level code of conduct. This sparked a major political debate and, in the summer of 2012, a "Transparency Package" was passed by the Austrian Parliament in an attempt to restore trust in politicians. This includes new laws on party financing with limits to donations and sponsorship, and new laws on lobbying and the acceptance of gifts.¹⁷ Laws on incompatibility have also become stricter, and deputies are required to give more detailed information on income earned outside of Parliament, as well as providing information on honorary posts.¹⁸

Reforms, however, are not always triggered by scandals. Indeed, there is a widespread trend towards more explicit regulation of a number of public offices. In younger democracies, reform of the regulation around standards may be intended to build or transform a political culture. Also in older democracies, reform of parliamentary standards is often motivated by a sense among parliamentarians that this is a requirement of modern political life or a realization during a routine review that rules are no longer functioning well. Bodies that interact with MPs and public officials are also increasingly subject to regulation. For example, codes of conduct are being introduced for lobbyists in many countries.

Having clear standards facilitates the operation of a democratic system, by helping other institutions to hold parliament and parliamentarians to account. Indeed, having clear standards may be beneficial for MPs in an environment where media scrutiny is intense. Arjen Westerhoff, a parliamentary official from the Netherlands, explained that reforms in his country were pursued because:

*"It was thought appropriate and part of modern times to make sure that the reputation of our parliament and our members would not be vulnerable to any false accusations".*¹⁹

This need to protect parliament's reputation is often mentioned explicitly in codes of conduct; in the Polish Sejm's Code of Ethics, for example, "care for the good name of the Sejm" is one of the five core principles.²⁰

However, there may not be consensus about how MPs should behave. Frequently, there are competing views about what constitutes the "proper" way to act and what is deemed corrupt.

16 Prof. Dr. Melanie Sully, Vice-President, Institute for Parliamentarism and Democracy Questions, Austria. Comment made in a written submission for this project to OSCE/ODIHR.

17 Bundeskanzleramt, Austria, "Federal government adopted „transparency package,“": <http://www.bka.gv.at/site/infodate__21.05.2012/7648/default.aspx?id47762>.

18 Some elements of the package were effective as of 1 July 2012, others will be as of 1 January 2013. More details on the laws passed are given on the homepage of the Austrian parliament (currently only in German) <http://www.parlament.gv.at/PAKT/PR/JAHR_2012/PK0550/>.

19 Telephone interview conducted for this study, 30 September 2011.

20 For more information, see <<http://www.sejm.gov.pl/prawo/zep.htm>>.

What is acceptable in one country might be unacceptable in another, and behaviour that was tolerated ten or 20 years ago might be frowned upon today.

The following questions illustrate some areas of controversy:

- Is it acceptable for MPs to employ their spouses or children to work as their assistants, paid for by public funds?
- Is it acceptable for MPs to receive funding for running a constituency office from their private property?
- Is it appropriate for an MP to accept gifts or hospitality from a major business in his or her constituency?
- Should MPs decide their own salaries?
- Should MPs be allowed to serve as city mayors in parallel to their parliamentary role? What about sitting on the board of a company?
- Is it cause for concern if an MP who serves, for example, on the Defence Committee in parliament then takes a job with a defence company when he or she leaves office?
- Is it ethical for an MP to receive campaign funding from a company that has directly benefited from his or her voting record?
- In what circumstances is it acceptable to lift an MP's immunity from prosecution? Who should decide?

Sometimes, the answers to these questions are provided by a country's constitution or laws. But, in most political systems, at least some of these questions pose dilemmas that do not have clear answers but could potentially lead to scandals that would damage public trust and perhaps cost an MP his or her seat. Professional standards should provide guidance to MPs on how to navigate some of these dilemmas.

Uncertainty about what is or is not ethical may be particularly common in democratizing countries, where old norms have been rejected but new ones are not yet consolidated. In all societies, though, standards – and expectations about conduct – change over time. Although systems for regulating standards draw upon international commitments and experience, they must ultimately be home-grown and tailored to each country's individual constitutional machinery and political culture.

"When deputies from different parties arrange freely, through dialogue and compromise, an ethical system they will respect and publicise...we can expect our citizens to evaluate us positively and support us"

Slavica Djukić-Dejanović, President of the National Assembly of Serbia (Comments at ODIHR conference in Belgrade November 2011)

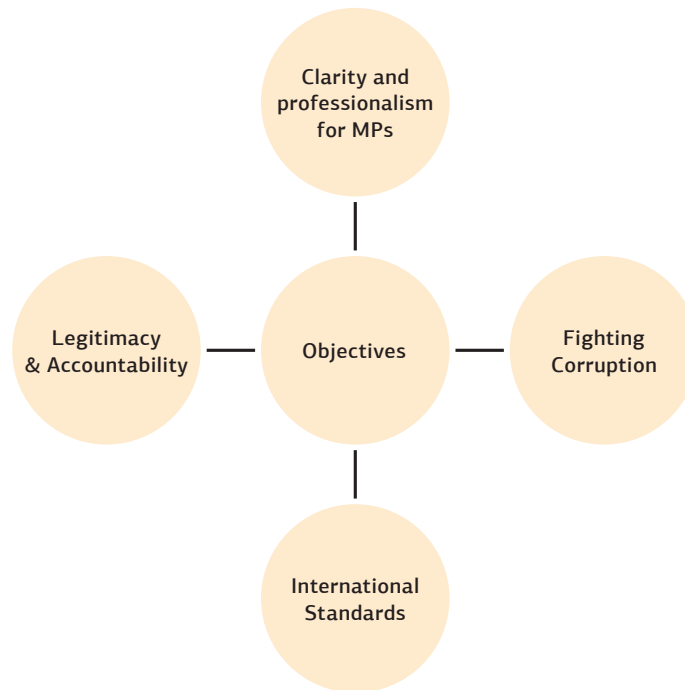
"We need to encourage new blood to enter politics and must do so on the basis of trying to have the highest standards."

Jim O'Keeffe, MP (during the Irish Dáil Éireann Debate on the introduction of a Code of Conduct on 28 February 2002)

A ruling by the German Constitutional Court in 2007 described the importance of transparency for building trust in parliament: *"Parliamentary democracy is based on the confidence of the people; trust without transparency, which allows one to follow what is happening in politics, is not possible. [...] The voter must know whom he chooses. [...] Such knowledge is important not only for the voting decision. It also ensures the ability of the German Parliament and its members, [to] represent the people as a whole, and the confidence of citizens in this ability and, ultimately, in parliamentary democracy."*

There are several objectives that drafters should bear in mind when establishing or reforming professional conduct regulation. It should be possible to achieve all of them, but some may take higher priority than others (see Figure 2).

Figure 2: Objectives of reforming parliamentary standards



- **Prevent corruption** – Robust professional-conduct regulation can help to prevent abuse of office and other forms of corruption. It does so by setting out clear rules for how MPs should behave, monitoring how they actually behave, and punishing transgressions. This should also make parliament more efficient and productive, providing regulation is not excessive. Regulation should not interfere with the exercise of parliamentary duties, e.g., by requiring deputies to engage in unnecessary bureaucratic procedures, but it should create a fair and stable environment in which MPs can perform their roles of representation, scrutiny and legislation.
- **Boost accountability** – Clear parliamentary standards improve accountability by giving the public and the media clear benchmarks against which to judge parliamentary conduct. If people believe that the system for regulating ethics is fair and effective, then they can more easily trust parliament to get on with its job, in the knowledge that any transgressions will come to light.²¹ If parliament is not trusted, this undermines its basic functions – its capacity to conduct oversight, to represent and to legislate. The rules do not necessarily have to be strict. Transparency, combined with effective sanctions, is often crucial.

²¹ EC EIPA, *op. cit.*, note 6, p.121.

- **Professionalise politics** – Historically, MPs have been elected from a variety of backgrounds and occupations, and this variety is important to their ability to represent voters. However, once in parliament, MPs need to adhere to the same rules about how they conduct themselves in office. Just as lawyers and doctors have shared standards across the profession, MPs need clarity about the standards expected of them. Clear standards can also help to unite MPs, allowing them to overcome the obvious political differences to build a sense of collegiality. They can also boost the prestige of the office, helping to attract high-calibre individuals to the role.
- **Meet international standards** – The introduction of codes of conduct for public officials, promoting integrity, honesty and responsibility, ultimately shows a country's commitment to the implementation and respect of shared international standards and norms. Indeed, legally binding documents like the UN Convention against Corruption (UNCAC) and the Council of Europe Criminal Law Convention against Corruption both call on their signatories to apply and actively promote codes of conduct within their own institutional and legal systems. Compliance with such norms can also be important to meeting the conditions for joining international associations or accessing aid.

1.2 The Limits of Regulation: Private Life

"What we are doing in our private life can be measured in relation to the Criminal Code and so on. Public life is measured in relation to the code of conduct. With such a code I have the opportunity to weigh what I do, or weigh what the public and external bodies expect of those who represent them in parliament. With such a code, ordinary people also have the opportunity to weigh my behaviour in relation to the code of conduct."
(Kevin Barron MP, UK)

[Comments during the OSCE Conference "Standards of Ethics and Conduct for Parliamentarians" in Belgrade, November 2011]

It is not generally appropriate to regulate the private behaviour and personal lives of MPs. Media scandals concerning extra-marital affairs or outlandish pursuits should not be the subject of regulation. However, private matters can occasionally come into the purview of conduct regulation. For example, in 2011 the United Kingdom Parliamentary Commissioner for Standards recommended the introduction of a clause in the code of conduct for MPs regarding circumstances in which the behaviour of members in their private lives could threaten to bring the House of Commons into disrepute, and thus might be a legitimate subject of investigation. The proposed new clause reads:

*"the Code does not seek to regulate the conduct of Members in their purely private and personal lives or in the conduct of their wider public lives unless such conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its Members generally."*²²

The new formulation would allow the Commissioner to decide to investigate and the House to intervene in extreme cases. The Lithuanian Code of Conduct for State Politicians includes a similar clause: *"The conduct or personal features of a state politician that are related to certain circumstances of his private life and that are likely to have influence over public interests shall not be considered private life."*²³

22 House of Commons, Committee on Standards and Privileges, *Review of the Code of Conduct*. 19th Report of Session 2010–12, United Kingdom, 2011, paragraph 6, p. 4, <<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmstnprv/1579/1579.pdf>>.

23 Republic of Lithuania, *Law on the Approval, Entry into Force and Implementation of the Code of Conduct for State Politicians*, Vilnius, 2006, <http://www.vtek.lt/vtek/images/vtek/Dokumentai/EN/Legislation/politiku_elgesio_kodeksas.doc>.

1.3 Immunity for Parliamentarians

There is also a risk that regulation of parliamentary standards could interfere with aspects of parliamentary work. For this reason, it is necessary to protect parliamentarians' rights to freedom of speech and freedom of expression in carrying out their role – e.g., when they are speaking in parliament, voting or promoting legislative initiatives. Such freedoms are fundamental to parliament's independence and to its ability to carry out its roles of representing constituents and scrutinizing executive power. As the Inter-Parliamentary Union notes in its *Human Rights Handbook for Parliamentarians*:

“Parliament can fulfil its role only if its members enjoy the freedom of expression necessary in order to be able to speak out on behalf of constituents. Members of parliament must be free to seek, receive and impart information and ideas without fear of reprisal. They are therefore generally granted a special status, intended to provide them with the requisite independence: they enjoy parliamentary privilege or parliamentary immunities. Parliamentary immunities ensure the independence and dignity of the representatives of the nation by protecting them against any threat, intimidation or arbitrary measure directed against them by public officials or other citizens. They thus ensure the autonomy and independence of the institution of parliament.”²⁴

These freedoms can be protected in two ways. First, protection can be granted to the statements that parliamentarians make, so that “parliamentarians in the exercise of their functions may say what they please without the risk of sanctions, other than that of being disavowed by the electorate.”²⁵ This freedom of expression for parliaments is often referred to as the principle of “material immunity” or “non-accountability”. An early example can be found in 14th century England, when Thomas Haxey, during the session of the English Parliament from 12 January to 12 February 1397, submitted a bill denouncing the conduct of the Court of King Richard II. He was tried and condemned to death for treason but later granted a royal pardon following pressure from the House of Commons.²⁶

In the United Kingdom, the principle of non-accountability is embodied in the 1689 Bill of Rights, and in most countries is enshrined in the constitution.²⁷ It was upheld in the European Court of Human Rights (ECHR) case *Castells v. Spain* (1992), following the conviction of an MP for publishing an article accusing the government of complicity in attacks and murders. The ECHR stated that:

“while freedom of expression is important for everybody, it is especially so for an elected representative of the people. [...] Accordingly, interferences with the freedom of expression of an opposition member of parliament [...] call for the closest scrutiny on the part of the Court [...]”²⁸.

24 Inter-Parliamentary Union, and Office of the United Nations High Commissioner for Human Rights, “Human Rights: Handbook for Parliamentarians”, No. 8, 2005, pp. 63–64, <<http://www.ohchr.org/Documents/Publications/training13en.pdf>>. (IPU Handbook)

25 Ibid., p. 65.

26 Council of Europe, “Report on the Regime of Parliamentary Immunity” (Strasbourg, 1996). Available at: [http://www.venice.coe.int/docs/1996/CDL-INF\(1996\)007-e.asp](http://www.venice.coe.int/docs/1996/CDL-INF(1996)007-e.asp) (visited on 16 August 2012). (CE Parliamentary Immunity)

27 In particular, Article IX states that, “the Freedom of Speech and Debates or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament”. House of Commons, *Bill of Rights*, United Kingdom, 1689, <<http://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction>>.

28 IPU Handbook, *op. cit.*, note 24, p. 116.

The Court also affirmed that:

*“the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. [...] the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings”*²⁹

This emphasizes the rationale for non-accountability, to protect parliamentarians – when they are executing their functions of representing constituents and scrutinizing the executive – from intimidation or pressure from government. However, the protection afforded to MPs’ statements in the chamber should not leave individual MPs vulnerable to slander and defamation by their own colleagues. Cases have arisen in several jurisdictions where parliamentarians have been unable to sue to clear their names when accused of acting dishonestly in connection with parliamentary duties, because it is impossible to draw on parliamentary proceedings as evidence to refute claims.³⁰ This issue deserves careful consideration, particularly in societies where the media is politicized.

Table 2: Non-accountability in selected countries³¹

	Persons covered	Scope	Duration	Can immunity be waived?	When/ How
Croatia	MPs	Member is only liable to disciplinary measures by the Speaker/ Chamber (i.e., call to order, censure) and is exempt from criminal and civil prosecution for opinions expressed and votes cast directly related to the performance of parliamentary duties	Protection is provided from the start to the end of the mandate. After the expiry of mandate, opinions expressed during the mandate are protected as well.	No	None, since non-liability cannot be waived
France	MPs	Member is only liable to disciplinary measures by the Speaker/ Chamber (i.e., call to order, censure) and is exempt from criminal and civil prosecution, and investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties.	Protection is provided from the start to the end of the mandate. After the expiry of mandate, opinions expressed during the mandate are protected as well.	No	None, since non-liability cannot be waived

²⁹ *Ibid.*, p. 116.

³⁰ In the United Kingdom, parliamentary privilege can be waived for the purpose of defamation proceedings, but critics argue that this undermines freedom of speech. See House of Commons, Joint Committee on Parliamentary Privilege, “First Report”, United Kingdom, 1999, paragraphs 60–82, <<http://www.publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4302.htm>>.

³¹ McGee Simon, *Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union*, Brussels, ECPRD Publication, 2001. Also see: Inter-Parliamentary Union, PARLINE Database, 2012, <<http://www.ipu.org/parline-e/parlinesearch.asp>>; and CE Parliamentary Immunity, *op. cit.*, note 26.

Germany	Members of the Bundestag only (not the Bundesrat)	Member is only liable to disciplinary measures by the Speaker/ Chamber (i.e., call to order, censure) and is exempt from criminal and civil prosecution for opinions expressed and votes cast directly related to the performance of parliamentary duties, made on the floor of the Bundestag or at parliamentary committee meetings.	Protection is provided from the start to the end of the mandate. After the expiry of mandate, opinions expressed during the mandate are protected as well.	Yes	In the cases of “unconstitutional defamation” or “contempt of the Bundestag”, either the Public Prosecutor or the Committee on Immunities and Rules of Procedure can call for a vote to be taken in the House.
Poland	MPs	Member is only liable to disciplinary measures by the Speaker/ Chamber (i.e., call to order, censure) and is exempt from criminal and civil prosecution for opinions expressed and votes cast directly related to the performance of parliamentary duties	Protection is provided from the start to the end of the mandate. After the expiry of mandate, opinions expressed during the mandate are protected as well.	Yes	In the cases when the rights of third parties are involved (violation of personal rights, or slander and defamation), the assembly (the Sejm) can lift the privilege enjoyed by the member of parliament
United Kingdom	MPs	Member is only liable to disciplinary measures by the Speaker/ Chamber (i.e., call to order, censure) and is exempt from criminal and civil prosecution, and investigation/examination, for opinions expressed and votes cast directly related to the performance of parliamentary duties.	Protection is provided from the start to the end of the mandate. After the expiry of mandate, opinions expressed during the mandate are protected as well.	Only in limited cases under the Defamation Act 1996 by Members or witnesses before committees.	By individual in courts.

Second, parliamentarians may be granted legal immunity from prosecution, and in some cases arrest, for ordinary crimes. This is known as “formal parliamentary immunity” or “inviolability” and is typically limited in scope – e.g., it only lasts for the MP’s term in office or can be waived if certain conditions are met (see table 3). Again, the rationale for this kind of immunity for parliamentarians is rooted in a concern that, historically, the executive branch has sometimes sought to remove “troublesome” or critical MPs. As the Inter-Parliamentary Union (IPU) notes “Prosecutions have often served as an excuse for governments to remove critical or obstructive parliamentarians from public circulation.”³²

Inviolability, however, is not equivalent to impunity – that is, it does not mean that parliamentarians are above the law or can commit ordinary crimes without fear of prosecution. Yet parliamentarians sometimes act as if this is the case, seeking to take advantage of their im-

32 IPU Human Rights: A Handbook (2005), *op. cit.*, note 24, p. 38.

munity rights to abuse power and avoid prosecution for criminal actions, including corruption and abuse of office.

For this reason, it is sensible to limit the extent to which parliamentarians can benefit from immunity. In this regard, for example, immunity is usually suspended when an individual is caught *in flagrante delicto* – in the act of committing an offence. When this has occurred, parliamentarians' immunity can be lifted in most countries, but only with the consent of parliament. This entitles parliament to verify that proceedings brought against its members are legally founded.³³ In Georgia,

*"MPs enjoy certain immunity from prosecution. Namely, the legislature's permission is required in order to arrest an MP, to search an MP's property or to keep in custody an MP who is arrested on the spot of a crime. MPs are authorized to withhold information obtained during their work and cannot face any charges for opinions expressed as part of their parliamentary activity."*³⁴

Any decision to remove immunity should follow due process and provide adequate opportunity for the MP to plead his or her case and appeal.³⁵

Table 3: Inviolability in selected countries³⁶

	Persons covered	Scope	Duration	Can immunity be waived?	When/ How
Croatia	MPs	Member is provided with protection from criminal proceedings and arrest, except where the member is apprehended during the act of committing a criminal offence that carries a penalty of imprisonment of more than five years	Protection is provided from the start to the end of the mandate and between early dissolution of the house and the election of a new parliament.	Yes	The proposal to lift immunity is submitted to the president of the chamber by the competent state authority. The president shall forward it to The Parliamentary Committee on Mandates and Immunities. The Committee submits its report to The Chamber at the next session. The decision to lift immunity is taken by the chamber.

³³ *Ibid.*, p. 65.

³⁴ Transparency International, "Georgia National Integrity System Assessment", Tbilisi, 2011, p. 33, <<http://transparency.ge/en/post/report/national-integrity-system-assessment>>. (TI Georgia Assessment)

³⁵ The ECHR has considered one case in this respect. In *Demicoli v Malta* (1991) 14 EHRR 47, the ECHR held that Article 6(1) applied to parliamentary contempt proceedings and that there had, in the circumstances, been a violation of that Article's guarantee of a fair trial by an independent and impartial tribunal.

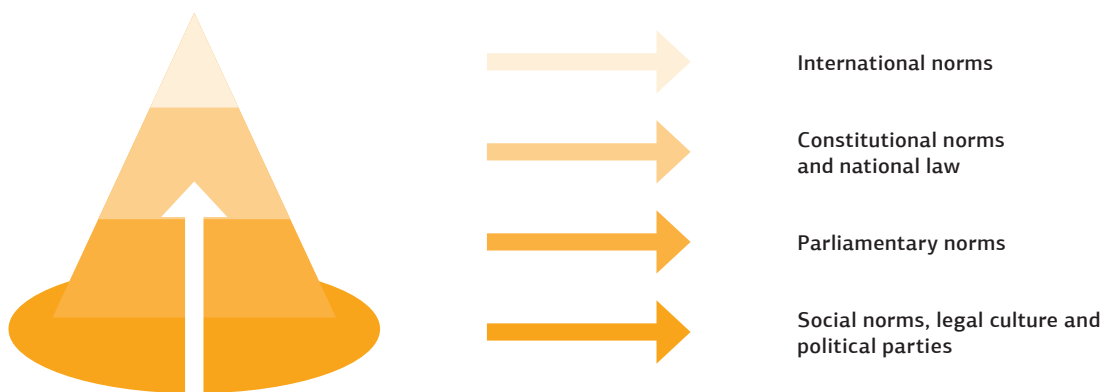
³⁶ McGee, *op. cit.*, note 31. and CE Parliamentary Immunity, *op. cit.*, note 26.

France	MPs	Member is provided with protection from criminal and administrative proceedings (though not against preliminary investigation or searches) and arrest, except where the member is apprehended in flagrante delicto, or if it concerns minor offences or penalties relating to taxation and civil matters, or on final sentencing.	Limited to the length of mandate	Yes	A proposal to lift immunity is made by the Ministry of Justice, which transmits it to the chamber. After examination by a Bureau delegation, a decision is made by the latter in camera.
Germany	Members of the Bundestag only (not the Bundesrat)	Member is provided with protection from criminal and disciplinary proceedings (including preliminary investigation or searches) and arrest, except where the Member is apprehended in flagrante delicto, or if it concerns civil actions, actions for breach of contract or preparatory acts for civil imprisonment.	Limited to the length of mandate	Yes	A request can be made by a number of bodies, including the Public Prosecutor, and the courts. The Ministry of Justice transfers the request to the Speaker of the Bundestag, who then passes it on to the Committee on Electoral Scrutiny, Immunities and Rules of Procedure. A vote is taken on the committee's recommendation.
Poland	MPs	It applies to criminal proceedings, covers all offences with the exception of those leading to occupational responsibility. The immunity also protects MPs from arrest, preventive custody, opening of judicial proceedings against them and from their homes being searched.	Limited to the length of mandate	Yes	Immunity can be lifted by the parliament. In this case, MPs must be heard. They do not have means of appeal.
United Kingdom	Members of both Houses	Immunity from arrest and detention for all civil actions. But this has almost no practical effect, since there are very few civil causes on which a person can be detained.	For 40 days after every prorogation and dissolution.	No	No, since inviolability cannot be waived.

1.4 The Context for Reform

Before embarking on any reform of parliamentary ethical standards, it is important to assess what rules already exist, and what other aspects of the context are relevant to reforms. Following a normative approach, such a “context” is defined by four interrelated layers of norms (see Figure 3 below). As part of the international community, a country might have obligations or might wish to commit itself to recognized international norms. At the national level, a country’s constitutional norms and ordinary laws are of critical importance to set ethical standards. Moreover, at the level of parliamentary norms, there may be formal norms – e.g., “rules of procedure” – as well as informal ones. Finally, these three layers rest on specific social norms and on a shared legal culture, in which political parties play a substantial role in filtering political candidates and raising ethical standards.

Figure 3: The normative framework in which ethical standards emerge



- **International norms** – There is no global regulation of parliamentary conduct and no right way of setting or enforcing rules.³⁷ However, the 1990s and 2000s saw a series of moves towards enshrining certain principles as examples of international good practice in democratic governance (see Table 4). Although most of them are recommendations, both the Council of Europe Criminal Law Convention against Corruption and the UN Convention against Corruption (UNCAC) stand out as important legally binding obligations for signatories. The latter, in particular, also includes, under its definition of “public official”, persons specifically holding “legislative office”, calling for codes or standards of conduct in order to fight corruption and promote integrity, honesty, responsibility and professionalism in the performance of public functions.

In general terms, international norms are ultimately important guides for all countries that want to make progress with democratization and fight against corruption. At the same time, compliance with international standards can be important to meeting the conditions for joining international associations or accessing aid.

37 The only area where there is relevant quasi-global regulation concerns the bribery of public officials, which can include parliamentarians. The OECD Anti-Bribery Convention, signed by 38 countries to date, outlaws the bribery of foreign public officials. An even larger group of countries has signed the UN Convention Against Corruption. These laws are clearly relevant to any reform of the rules about how parliamentarians behave, but under these regulations liability lies with the companies that pay bribes rather than the public officials that receive them (although the latter may be liable under their own national laws for accepting bribes).

Table 4. Towards international standards of conduct: A chronology

1996	The United Nations General Assembly adopts a “model international code of conduct for public officials” as a tool to guide efforts against corruption. ³⁸
1997	The Council of Europe (CoE) adopts the Guiding Principles for the Fight against Corruption, which include number 15, “to encourage the adoption, by elected representatives, of codes of conduct”. ³⁹ The OECD Anti-Bribery Convention is adopted, requiring signatories to implement national legislation that outlaws the payment of bribes to foreign public officials – including parliamentarians – in international business transactions. ⁴⁰
1999	The CoE Criminal Law Convention against Corruption obliges states to ban active and passive bribery of “domestic public assemblies”. ⁴¹ The CoE establishes the Group of States Against Corruption (GRECO) to monitor compliance with anti-corruption standards and further the Guiding Principles. CoE Recommendation 6o of the Congress of Local and Regional Authorities on political integrity of local and regional elected representatives includes a code of conduct as an appendix, providing guidance on how to carry out daily duties in accordance with ethical principles and take preventive measures to reduce the risk of corruption. ⁴²
2000	Parliamentary Assembly of the Council of Europe Resolution 1214 attests to growing international consensus on the necessity of a disclosure mechanism for members’ interest as a minimum in regulating parliamentary conduct.
2005	The UN Convention against Corruption (UNCAC) establishes a legally binding obligation on signatories “to apply, within [their] own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions”. ⁴³
2006	The OSCE Parliamentary Assembly ⁴⁴ Brussels Declaration sets out recommendations for regulating the professional standards of parliamentarians (see box below). ⁴⁵
2010	CoE Resolution 316 of the Congress of Local and Regional Authorities focuses on the risks of corruption and emphasises the importance of promoting a “culture based on ethical values”. ⁴⁶
2012	GRECO’s Fourth Evaluation Round is launched, focusing on Corruption Prevention in respect of MPs, judges and prosecutors. ⁴⁷

38 United Nations, UN General Assembly, “Resolution 51/59”, 12 December 1996, <<http://www.un.org/documents/ga/res/51/a51r059.htm>>.

39 Council of Europe, Committee of Ministers, “Resolution 97 (4) On the Twenty Guiding Principles for the Fight Against Corruption”, 1997, <[http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution\(97\)24_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution(97)24_EN.pdf)>.

40 OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents, 2011, <<http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/38028044.pdf>>. The definition of “foreign public official” includes “any person holding a legislative, administrative or judicial office of a foreign country.”

41 Council of Europe, “Criminal Law Convention against Corruption”, Strasbourg, 1999, <<http://conventions.coe.int/Treaty/en/Treaties/html/173.htm>>.

42 Council of Europe, “Recommendation 6o on political integrity of local and regional elected representatives”, Strasbourg, 1999, <<https://wcd.coe.int/ViewDoc.jsp?id=847931&Site=COE>>.

43 United Nations, “UN Convention against Corruption”, New York, 2004, Art. 8.2., <http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/o8-50027_F.pdf>.

44 This institution comprises 320 members drawn from all of the OSCE participating states and aims to facilitate inter-parliamentary dialogue in relation to the OSCE’s goals.

45 OSCE PA, *op. cit.*, note 5.
Ibid., p. 16.

46 See Council of Europe, “Rights and duties of local and regional elected representatives”, Strasbourg, 2010, <<https://wcd.coe.int/ViewDoc.jsp?id=1697717&Site=CM>>.

47 The questionnaire is available at: <http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp>.

*Excerpt from the OSCE Parliamentary Assembly Resolution on limiting immunity for parliamentarians in order to strengthen good governance, public integrity and the rule of law in the OSCE region*⁴⁸

"[The Parliamentary Assembly] urges the Parliaments of the OSCE participating States to legislate to:

- a. Provide clear, balanced, transparent, and enforceable procedures for waiving parliamentary immunities in cases of criminal acts or ethical violations;
 - b. Provide that the privilege of parliamentary immunity must not apply to actions taken by an individual before they have assumed office or actions taken after they have left public office".⁴⁹
-

- **Constitutional norms and national laws** – In establishing a system to regulate parliamentary standards and deciding what character it should have, drafters should also consider relevant provisions in the constitution, including the balance of power among parliament and the executive, bureaucracy and judiciary. The constitutional and *de facto* balance of power will shape the incentives and opportunities that MPs face to behave professionally and ethically. Hence, this can help to identify the priority areas for regulation. For example, if parliament is weak and has little influence over policy-making and law-making, then it is less likely that interest groups will seek to buy influence by bribing MPs. The main risks of misconduct might rather relate to the use of parliamentary resources.

Moreover, any new rules must be compatible with the constitution. In Serbia in 2010, the Anti-Corruption Agency (ACA) initiated a procedure of constitutional review before the Constitutional Court in response to an amendment of the closing provisions of the ACA Act relating to officials *already* in office.⁵⁰ The Act states that, where public officials wish to run for another public position, the Agency must establish whether there is a conflict of interest.⁵¹ The new amendment, to which the ACA objected, allowed public officials to retain any office which they already held on the day the Act came into force – e.g., existing parliamentarians and provincial or city councillors could maintain additional positions of mayors or deputy mayors (or other positions in the executive branch). The ACA found this to be contrary to the Constitution of Serbia and other laws regulating local governments, all of which strictly divide legislative and executive power, and hence initiated a procedure before the Constitutional Court. The ACA also argued that it was discriminatory to other officials and violated the UN Convention against Corruption, as well as the European Convention on Human Rights – conventions to which Serbia is a party. In September 2011, the Constitutional Court upheld the ACA com-

⁴⁸ OSCE PA, *op. cit.*, note 5.

⁴⁹ *Ibid.*

⁵⁰ Amendments to the Law were published in the Official Gazette of the RS, No. 53/10 on 29 July 2010 and entered into force on 6 August 2010.

⁵¹ According to the Act, the ACA is responsible for deciding on potential conflicts of interest and may adopt decisions and impose administrative measures where violations are found to have occurred. The ACA also has the right to initiate a misdemeanor procedure in cases where public officials fail to act according to the issued decisions. Officials, in turn, have a right to appeal to the Agency Board (the second instance body) and, in cases where they are not satisfied with that decision, judicial review is guaranteed by their right to lodge administrative suit to an administrative court in Belgrade. The Anti-Corruption Agency Act was established in the Official Gazette of the RS, No. 97/08 on 27 October 2008 and came into force on 1 January 2010.

plaint.⁵² It declared the provision unconstitutional and voided it, enabling the ACA to close all pending cases.⁵³ The ACA's argument was not that the positions of MP and mayor *necessarily* conflict, but that holding them concurrently was against the law in Serbia. The case, therefore, demonstrates the importance of ensuring that any changes to regulations on parliamentary conduct are compatible with the constitutional and legal context.

In some systems, MPs fall under the same system of regulation as that existing for public officials and hence may be subject to international anti-corruption obligations such as the United Nations Convention against Corruption.⁵⁴ For example, in Georgia, the Constitution and the Law on Public Services contain provisions that regulate the conduct of public officials, and these also apply to MPs. In other institutional arrangements, separate regulatory systems are in place for different types of public roles. For example, distinctions are sometimes made between MPs who hold executive office and those who do not. In the United Kingdom, there is a separate code for MPs who are simultaneously ministers, which subjects them to stricter monitoring and investigative processes. In Ireland, there are different codes for "office holders" (e.g., ministers or committee chairs) and "non-office holders", in some cases bringing together elected and non-elected officials.⁵⁵ For certain issues, there may also be merit in expanding regulation to cover close associates of MPs, such as key staff and aides, family members and friends.⁵⁶

Table 5. Examples of codes of conduct for "office holders"

Country	Code	Date of Adoption	Main features
Canada	The Conflict of Interest and Post-Employment Code for Public Office Holders	1994	Provisions regulating the conduct of public office holders (e.g., ministers, secretaries of state, parliamentary secretaries)
Georgia	Law on Public Services	1997	Provisions regulating the conduct of public officials, including MPs
Ireland	Code of Conduct for Office Holders	2003	Provisions regulating the conduct of office holders (e.g., prime minister, deputy prime minister)
Lithuania	Code of Conduct for State Politicians	2006	Provisions regulating the conduct of all politicians, including MPs
Malta	Code of Conduct for Ministers and Parliamentary Secretaries	1994	Provisions regulating the conduct of ministers and their secretaries
UK	Ministerial Code	2010	Provisions regulating the conduct of ministers

52 Beta, Tanjug, "20 Officials to step down due to conflict of interest", 2011, <http://www.b92.net/eng/news/politics-article.php?yyyy=2011&mm=09&dd=08&nav_id=76301>.

53 This meant that more than 25 individuals were in contravention of the constitution and could have been forced to step down from one post. However, intense media coverage prompted most of the officials to resign immediately from one of their positions without a formal procedure. Information provided in correspondence by Zorana Marković, head of the ACA.

54 See paragraph A.4 of the thematic report on "Implementation of chapter III (Criminalization and law enforcement) of the United Nations Convention against Corruption" (CAC/COSP/2011/2), distributed at the Conference of the States Parties to the United Nations Convention against Corruption, 25 August 2011, <<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2011-August-25-26/V1185447e.pdf>>.

55 Irish House of Representatives, "Code of Conduct for Members of Dail Eireann other than Office Holders", 2002, <<http://www.sipo.gov.ie/en/CodesofConduct/TDs/>>. And Irish House of Representatives, "Code of Conduct for Office Holders", 2001 <<http://www.sipo.gov.ie/en/CodesofConduct/OfficeHolders/>>. For the Senate, see Irish House of Representatives, "Code of Conduct for Members of Seanad Eireann other than Office Holders", 2002, <<http://www.sipo.gov.ie/en/CodesofConduct/Senators/>>.

56 OECD Asset Declarations, *op. cit.*, note 9.

Drafters should also ensure that the new system for regulating parliamentary standards is compatible with other relevant laws, including electoral laws, political party laws, party finance laws, anti-corruption laws and laws on the status of MPs or on the status of the parliament. For example, in the United States, the Congressional ethics regime is rooted not only in parts of the constitution but also in Standing Rules, separate codes of conduct of the House of Representatives and the Senate, Rules of the House of Representatives and the House Ethics Manual. The Ethics in Government Act of 1978 and the Congressional Accountability Act of 1995 apply in some instances as well.

A country's electoral system can also affect the balance of power between a political party and individual MPs, and hence influence the pattern of corruption risks. In a proportional representation system with closed party lists, individual MPs may put loyalty to the party above the interests of voters. In a system with individual member constituencies, by contrast, accountability to the electorate may be stronger, and individual MPs might be more motivated to regulate themselves.

National laws for party financing are also relevant. As a recent study from the European Parliament's Office for the Promotion of Parliamentary Democracy comments:

"In countries where political parties are financed by the state, there is a different relationship between politics and the private sector than in one where parties are financed solely from private and corporate donations."⁵⁷

The implication is that lobbying by business may pose more of a risk to MPs' integrity in countries where parties rely on the private sector for funds.

- **Parliamentary norms** – Any reform of parliamentary standards regulations also needs to take into account existing codes of conduct for legislators or parliamentary staff, rules of procedure, standing orders of the parliament, parliamentary resolutions, and guides and manuals for legislators.

Informal rules and conventions about how MPs conduct themselves and how parliamentary business is executed can also be critical to how parliament works. Examples of such traditions include:⁵⁸

- MPs in the United Kingdom listen to the "maiden speech" of new Members without intervening;
- MPs refer to one another with the title "the Honourable", as in Italy, Malta and the United Kingdom;
- MPs might remain in the plenary to listen to at least two interventions after making a speech of their own; and
- MPs may be expected to inform another member if they plan to make a negative reference to him or her in a speech.

57 European Parliament, Office for Promotion of Parliamentary Democracy, *Parliamentary Ethics: A Question of Trust*, Brussels, 2011, p. 14, <http://www.europarl.europa.eu/pdf/oppd/Page_8/codes_of_conduct_FINAL-ENforweb.pdf>. (EP Parliamentary Ethics)

58 Such traditions are often recorded in books about the practice of a particular parliament, e.g., in the United Kingdom, see Jack, Malcolm, *Erskine May: Parliamentary Practice* (London: LexisNexis Butterworth, 2011).

Any effort to set professional standards in a parliament needs to take account of these subtleties. For example, in some chambers, the speaker or president of the parliament plays an important role in enforcing rules and norms during debates, often setting a series of important precedents as to what is permissible behaviour. However, the legitimacy of this depends on this leader being independent. In parliaments where the Speaker does not set aside his or her political party allegiance upon assuming office, such a regulatory role may be more controversial.⁵⁹

There may also be informal norms in society that affect parliamentary behaviour. In some countries, MPs are expected to favour their constituencies, by channelling state resources to the population and local interest groups. This is seen as a legitimate part of a legislator's role in many countries, but is regarded as inappropriate in other countries. New rules that ignore – or fail to address – existing norms and conventions are unlikely to be effective.

Social norms and the role of political parties – The above-mentioned layers of codified norms – international, constitutional, parliamentary – rest ultimately on certain specific social norms – customary and uncoded rules that govern behaviour in groups and society. Social norms are usually based on a specific “legal culture”, which can be understood here as the values, ideas and attitudes that a society holds towards its codified law. It is, therefore, among these social norms that shared ethical standards emerge and find legitimacy.

It is also at the stage of the political candidates' selection that political parties assume their paramount function as *ethical* gatekeepers of democracy. Indeed, political parties have the often forgotten responsibility to exert a decisive role in setting ethical standards for future MPs and public officials. Because they are the first to screen and select political candidates, political parties should function as ethical filters. They should only support those individuals who have demonstrated high ethical standards.

Political parties can exert their role as ethical gatekeepers in various ways by:

- Introducing codified ethical standards into their party programmes;
- Scrutinizing ethically sensitive information regarding candidates during the candidate selection process and, as a consequence, acquiring legitimacy in the eyes of the electorate; and
- Creating a mechanism (e.g., party ethics or disciplinary committees) to allow the members and electorate to engage directly in the ethical filtering process of its political representatives. In this way political parties could also perform as ethical educators, raising awareness about ethics in the wider society.

⁵⁹ In parliamentary practices associated with the Westminster, United Kingdom system, speakers distance themselves from their parties upon election to the speakership.

Part Two: Tools for Reforming Ethical Standards

This part of the study is intended to be a practical guide to be used as a reference for those involved in designing or reforming parliamentary ethical standards.

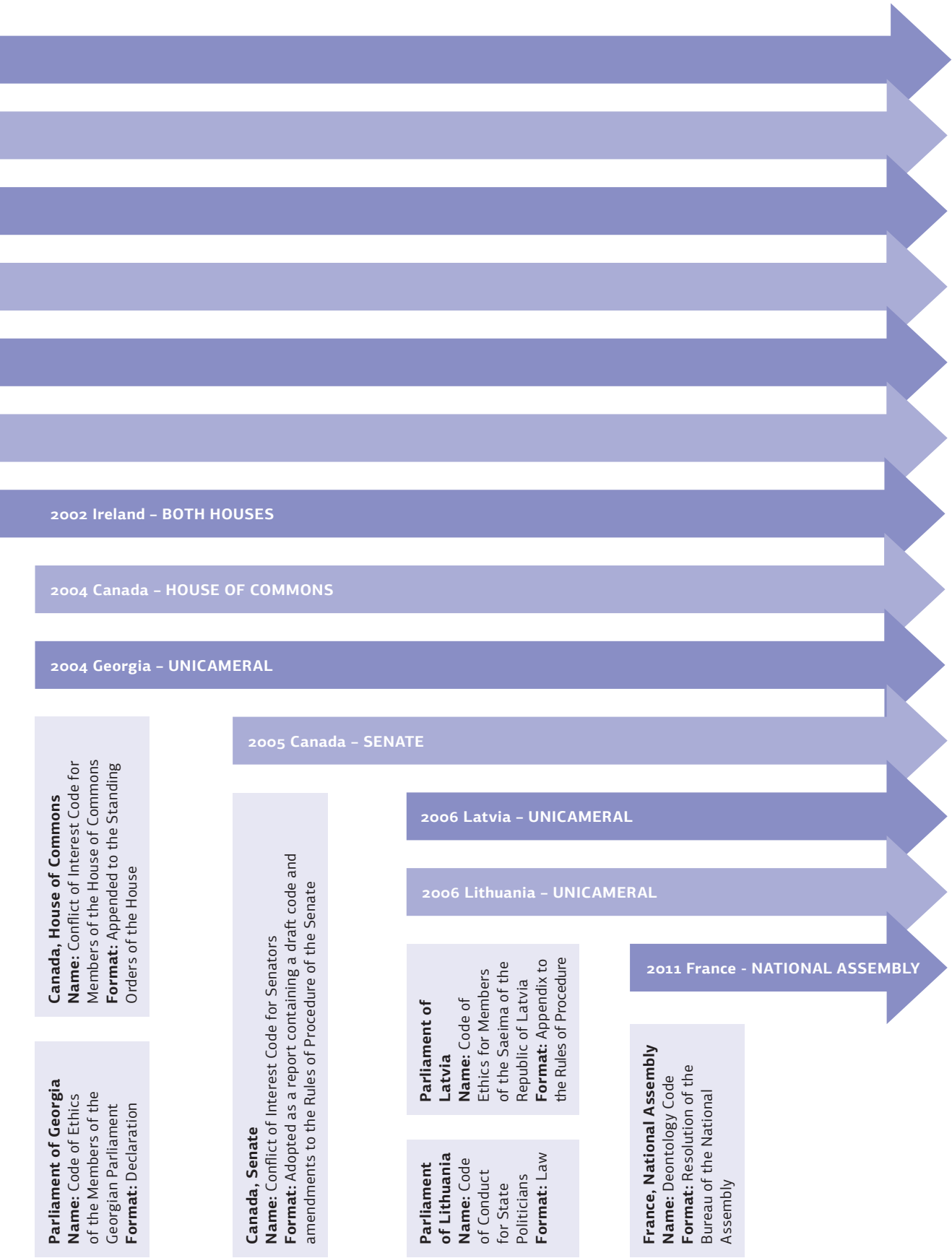
Section 2.1 considers the question of whether a code of conduct should be seen as an integral part of parliamentary standards, assesses the potential benefits of having a code and examines the different types of code that are in use. **Section 2.2** tackles the various ways in which a code of conduct can be drafted, offering several examples from OSCE countries.

The subsequent sections in this part of the report consider “what to regulate”. In **Section 2.3**, we assess the regulation of interests and assets. This is essential to protecting against potential conflicts of interest and corruption, and is an area where tools for regulation are well developed. In **Section 2.4**, we deal with the use of public money in the form of expenses and allowances. This is also an area that requires regulation in any parliament, but where there are increasing concerns about abuses in many countries. **Section 2.5** examines the interaction of MPs with lobbyists, inherent potential dangers of this special relationship, and what is needed to achieve effective regulation of lobbying based on transparency and accountability.

Finally, in **Section 2.6**, we evaluate other areas that countries may wish to regulate, but where there is less of a consensus on the appropriate level or type of regulation. These issues include conduct and language in the chamber, attendance, dress code, gender equality, and post-parliamentary employment.

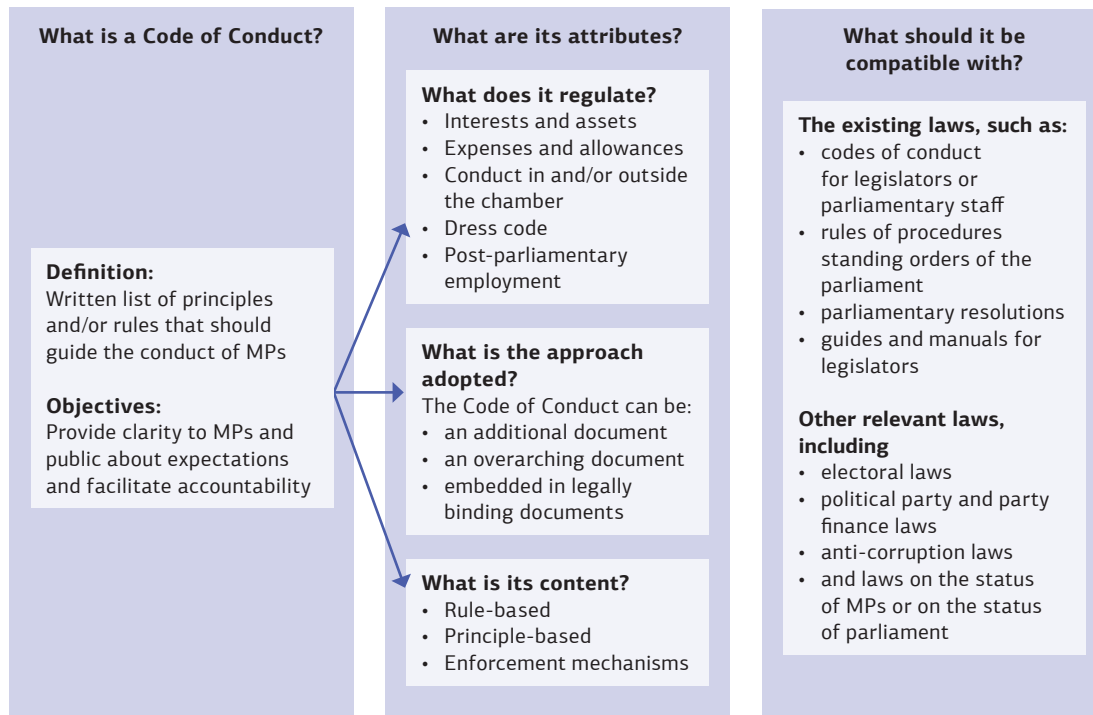
Figure 4: Dates of adoption of Codes of Conduct in the OSCE region





2.1 A Code of Conduct

Figure 5: Drafting a code of conduct



The benefits of a code of conduct

In many countries, the conduct of parliamentarians is regulated by articles of the national constitution and elements of several laws – laws setting rules for holders of public office, laws on conflict of interest, laws on asset declarations, laws on parliament, as well as the Criminal Code or Administrative Offences code. It could be argued, therefore, that there is no need for a separate code of conduct or ethics for MPs.⁶⁰ Indeed, many parliaments have not developed a code of conduct, preferring to rely on the professional standards that exist in the “web” of laws, rules of procedure and standing orders. However, the introduction of codes of conduct is “a rapidly evolving trend”, with a number of countries reporting that they are “currently considering the introduction of codes of conduct.”⁶¹

Many reformers argue that there is merit in having an overarching document that collates the legal and regulatory obligations of MPs and their staff in one place. The Scottish Parliament has adopted a code of conduct for members on this basis. It explains all of the rules by reference to detailed citations and analyses of the relevant parts of other laws.⁶² This makes it easier for MPs to find the rules pertaining to any particular situation in which they find themselves, and also helps the media and public to check whether MPs are living up to expectations.

60 European Centre for Parliamentary Research and Documentation (ECPRD), “Codes of Conduct in Europe: An overview”, 2001, p. 7, <http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/ParliamentaryCodesofConductinEurope_EN.pdf>.

61 EP Parliamentary Ethics, *op. cit.*, note 59, p. 7.

62 Scottish Parliament, *Code of Conduct for Members of the Scottish Parliament, 5th Edition*, 2011, <http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/code_final.pdf>. (Scottish Code)

"[...] precise sets of ethical rules [such as Codes of Conduct]... provide a clear framework of action in which Members can carry out their duties, strengthening their political credibility and thereby their chances of re-election".

European Centre for Parliamentary Research and Development, *Parliamentary Codes of Conduct in Europe: An Overview*, 2001, p.8.

Another approach is to embed a code of conduct in a legally binding document, as with the German or Latvian codes, which are annexes to the Rules of Procedure of the respective parliaments.

Even if they are not legally binding documents, codes can help to regulate conduct simply by their existence:

*"When everyone clearly knows the ethical standards of an organization they are more likely to recognize wrongdoing; and do something about it. Second, miscreants are often hesitant to commit an unethical act if they believe that everyone else around them knows it is wrong. And, finally corrupt individuals believe that they are more likely to get caught in environments that emphasize ethical behaviour."*⁶³

Just as the Hippocratic Oath sets standards for members of the medical profession, a code of conduct can set standards for parliamentarians and may, by doing so, help to generate a sense of professionalism.

Malta: The added value of a code

From the Preface to the Maltese Parliament Code of Ethics, June 1995, by Speaker Lawrence Gonzi:

*"This Code of Ethics establishes standards of correct behaviour which the Members of the House are themselves proposing to observe as elected representatives serving their country in its highest democratic institution. Obviously, the innovation for our parliamentarians does not lie in the standards themselves, since every single member has always been expected to conduct himself in accordance with the dignity of the institution in which he serves. What is new, is the fact that these rules of conduct have now been codified, thus providing a further tool for public scrutiny and enhancing accountability."*⁶⁴

A code can also set goals above and beyond legal requirements, enshrining values that should guide the behaviour of MPs and standards to which they should aspire.⁶⁵ They might seek to deter conduct that is not illegal but could nonetheless be considered unethical. Equally, they might encourage conduct that is beneficial to a healthy democratic process.⁶⁶ For example, the

⁶³ *Ibid*, p. 8.

⁶⁴ Malta House of Representatives, "Code of Ethics of Members of the House of Representatives", 1995, <<http://www.parlament.mt/codeofethics-mp?l=1>>. (Malta Code)

⁶⁵ The Westminster Foundation for Democracy notes that "code" has different meanings in different legal cultures. Whereas in common law traditions a code is seen as a "non-statutory regulation developed by agreement", in civil law traditions, a code is a legally binding statute.

⁶⁶ Stapenhurst, *op. cit.*, note 11, p. 18.

Georgian Parliament's Code of Ethics states that "MPs should actively cooperate with the representatives of mass media in the matters which are important for the society."⁶⁷

Debate: What are the benefits of a code of conduct?

If the behaviour of MPs is already regulated by the constitution and laws, is a code of conduct necessary? There are several reasons why it might be:

- **Ease of reference for MPs** – All the official rules are explained in one place, meaning that the code is a source of guidance for MPs;
 - **Improved accountability** – The code sets clear standards, against which the public and media can judge MPs and, if consistently enforced, this may help MPs to protect their personal lives from media scrutiny;
 - **Promoting professionalism and collegiality** – One scholar has described codes of conduct as "*what professionals use to make the claim that they are 'professionals.'*"⁶⁸ The more that the role of an MP is seen as respected and prestigious, the easier it will be to attract high-quality individuals into the service. A code can also serve as a "common denominator", something that MPs share when many other things divide them; and
 - **Flexibility** – Where a code is adopted by parliamentary resolution, it can be amended and updated relatively quickly to reflect emerging problems or changes in norms (although there should be a clear procedure by which to make such changes, and those that are part of the Rules of Procedure will be subject to the same rules for amending the rules.)
-

In terms of content, codes can be either "rules-based" or "principles-based".⁶⁹ A rules-based code sets out specific behavioural prescriptions, and is likely to be lengthy. A principles-based code lists only the principles and values which MPs should follow and to which they should aspire. The United Kingdom Parliamentary Commissioner for Standards notes that "a rules-based approach can be complex and hard to follow, encouraging an overly legalistic approach to standards and running the risk of failing to cover every eventuality" whereas a principles-based code "can set a clear and simple framework, but allows room for differences in interpretation which can create uncertainty and controversy."⁷⁰ However, the two types of codes are not mutually exclusive. Any code of conduct must be based on certain principles, even if they are implicit, and most will contain some behavioural prescriptions. Moreover, short principles-based codes of conduct are frequently accompanied by manuals or handbooks, which go into great explanatory detail. The United Kingdom House of Commons Code, while only four pages itself, is accompanied by a much longer *Guide to the Rules relating to the Conduct of Members* and

⁶⁷ Georgian Parliament, "Code of Ethics of the Members of the Georgian Parliament", p. 2, article 8, <http://www.parliament.ge/files/1107_17620_548540_CodeofEthics-Eng.pdf>.

⁶⁸ Gilman, Stuart, *Ethics Codes and Codes of Conduct as Tools for Promoting an Ethical and Professional Public Service: Comparative Successes and Lessons*, (Washington, DC: PREM/World Bank, 2005), p. 4.

⁶⁹ United Kingdom House of Commons, Parliamentary Commissioner for Standards, "Review of the Code of Conduct for Members of Parliament: Consultation Paper", 2011, <<http://www.parliament.uk/documents/pcfs/review-of-code-of-conduct-2011/Review-of-the-code-of-conduct-2011.pdf>>.

⁷⁰ *Ibid.*, p.7.

the United States House of Representatives code is complemented by the 456-page *House Ethics Manual*.⁷¹ Figure 6 illustrates the occurrence of certain values in a selection of codes, with larger text indicating more frequent occurrence.

Figure 6. Frequency of certain values in parliamentary codes⁷²



⁷¹ United States House of Representatives, "House Ethics Manual", 2008, <http://ethics.house.gov/Media/PDF/2008_House_Ethics_Manual.pdf>.

⁷² Created on the basis of the codes of conduct of the United Kingdom, United States, Poland, Latvia, Scotland and the European Parliament, using wordle.net.

Ukraine sets out principles for conduct in public life

In May 2012, the Ukrainian Parliament adopted a new law on Rules of Ethical Conduct that introduces a body of rules of conduct applicable to individuals performing public functions on behalf of the state or a local authority, including the President and the Prime Minister, ministers, members of the Ukrainian Parliament and local councils, civil servants, judges and other state officials.⁷³

The law specifies ten key principles to which conduct should adhere:

- legality;
- political neutrality;
- tolerance;
- acting exclusively in the public interest;
- objectivity;
- confidentiality;
- competence;
- promotion of the public's trust in the state and local authorities;
- an obligation to challenge and refuse compliance with any unlawful decisions or assignments; and
- conflict of interest avoidance.

The law also provides some guidance on how these principles are to be interpreted and applied, although many areas remain ambiguous.⁷⁴

2.2 Drafting a Code

The process of drafting a code can be an important exercise for generating debate and discussion on what the rules should be, helping to restore rifts between parliamentarians and society and creating a common understanding of what is appropriate conduct and of what, instead, represents misconduct. Reforms that are introduced in a hurry, or imposed from outside, are likely to meet obstructions at every turn. By contrast, regulatory systems that command wide support from MPs can be effective even with a light touch, since they create an environment in which deputies want to behave ethically, and the public by and large trusts them to do so.

The best way to build legitimacy is by consulting widely with relevant groups, listening to their concerns and suggestions, and designing a system that addresses those issues. The same groups should then be asked to comment on the proposed system, and communication channels should be established to explain why certain decisions have been made. Public consulta-

73 See Ukrainian Parliament, "Law of Ukraine on Rules of Ethical Conduct No. 4722-VI", 17.05. 2012, <<http://zakon2.rada.gov.ua/laws/show/4722-17>>.

74 Commentary by law firm Cameron McKenna notes, for example, that despite including certain provisions preventing officials from receiving illegal benefits or gifts, there is no definition in the law of what would constitute a gift or donation.

tions – through websites, as well as public hearings – on a draft code or changes to a code may be a useful tool to incorporate in the drafting process.⁷⁵

Estonian NGO calls for code of ethics

In Estonia, a scandal in late 2011 over legislators allegedly arranging residence permits for foreign businessmen prompted the local NGO, Corruption-Free Estonia, to call for a code of ethics for parliamentarians. In December 2011, Jaanus Tehver, chairman of the board of Corruption-Free Estonia, told the media that, although the scandal did not reveal activity that was illegal, it highlighted the need for clearer rules: *“the general context is such that we should be more aware of the possible risks in connection with such activity [...] It is intrinsically a problematic area and we have drawn attention to the fact that the rules in this area should be clearer among MPs as well”*.⁷⁶

Sometimes political parties take the lead in driving reform, adopting tougher rules for their own members and using them to shame other parties into putting ethics reform on the agenda. However, reforms driven by parliament as a whole and rooted in consensus will be easier to enforce than those that are developed in a polarised or heavily politicized process. This highlights the importance of involving parliamentary authorities and a broad cross-section of parliamentarians, as well as senior political party leaders, to obtain cross-party commitment to and ownership of the code. Drafters should also think about how the legitimacy of the code can best be secured, e.g., whether it is important to have the code adopted by the plenary, or whether deputies should be asked to sign the code individually.

However, it is also important that one body takes responsibility for driving the process of reform forwards. Within parliament, the code might be drafted by one of the following:

- **A specially appointed ad hoc committee** – The European Parliament’s new code of conduct was drafted by an ad hoc working group set up in March 2011 by the conference of political faction leaders;⁷⁷
- **An existing parliamentary committee** – In the United Kingdom House of Commons, the Committee on Standards and Privileges leads the drafting and review processes for the United Kingdom Code of Conduct; or
- **A working group or sub-committee of a parliamentary management body** – In France, the Bureau of the National Assembly has this responsibility and in Germany, a sub-commission of the Bundestag’s Council of Elders reviews the rules of conduct for members of the Bundestag.

75 For example, in 2011 the United Kingdom undertook a public consultation for the review of the House of Commons code of conduct. Available at: <<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/pcfs/consultation-on-code-of-conduct-for-mps/>>.

76 ERR News, “NGO Calls for Parliamentary Code of Ethics”, 2 December 2012, <<http://news.err.ee/politics/19ec6211-dfbo-4a27-a5e6-74fcd820e53a>>.

77 European Parliament, “EP leaders agree to develop new rules for lobbyists and stronger code for MEPs”, Brussels, 2011, <<http://www.europarl.europa.eu/en/pressroom/content/20110331IPR16697/html/EP-leaders-agree-to-develop-new-rules-for-lobbyists-and-stronger-code-for-MEPs>>.

The drafting group should be selected by a fair and transparent process, and it is of utmost importance that the reputations of its members are not tarnished. The group should lead by example in making the work of the committee transparent and declaring the interests of members, even beyond the requirements for parliament. Ideally, such groups would be led by or include key personalities that are widely regarded as ethical leaders and who inspire the confidence of the public.

There are many sources of guidance on how to draft codes. The Organisation for Economic Co-operation and Development (OECD) Global Forum on Public Governance cite the seven recommendations of Maesschalck and Schram, who say that a good code should be:

- **Clear:** legible for all staff members;
- **Simple:** as simple as possible, but not forgetting that integrity is a complex topic;
- **Concrete:** uses specifics and examples, avoiding generalizations;
- **Structured:** is logically centred around a number of core values;
- **Consistent:** uses concepts in a consistent way;
- **Linked:** includes cross references to other documents and guidelines; and
- **Relevant:** moves beyond the obvious to issues where guidance is needed.⁷⁸

After wide consultation and successive rounds of re-drafting, the final system should be adopted by a plenary vote or resolution. This helps to raise awareness of any new rules or institutions as well as demonstrating that the parliament is committed to the new framework.

"What is crucial, no matter what the content of our code of conduct for deputies...is that we should be aware that it must be voluntarily accepted. If we do not have the consciousness that this is good, and good for all, then you might have a good code, but one that was used exclusively for conflict"

(Gordana Čomić MP, Deputy Speaker of the National Assembly of Serbia)

Comments made at an OSCE Conference: Standards of Ethics/Conduct for Parliamentarians in Belgrade, November 2011.

Moreover, drafting groups frequently receive assistance from NGOs or OSCE field operations. For example, in Latvia in 2004, the mandate committee of the parliament asked an NGO, Centre for Public Policy – Providus, to draft a code. It subsequently used this proposal, as well as an alternative draft commissioned by another consultant, to form the basis of its own version, which was eventually adopted by parliament.⁷⁹ Examples of OSCE assistance are outlined in the following box.

⁷⁸ OECD, "Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation, 23 April 2009, <[http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC/GF\(2009\)1&doclanguage=en](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=GOV/PGC/GF(2009)1&doclanguage=en)>.

⁷⁹ Interview by telephone with Valts Kalnins, Centre for Public Policy-Providus, 17 February 2012.

Bosnia-Herzegovina: Building consensus on a new code of conduct, with the OSCE Mission's support

In 2006, the Bosnia and Herzegovina Parliamentary Assembly established a Working Group within the Joint Committee on Human Rights, Rights of Children, Youth, Immigration, Refugees, Asylum and Ethics (JCHR) to draft a code of conduct for MPs. The Working Group was assisted by the Legislative Strengthening Programme of the OSCE Mission to Bosnia and Herzegovina which, among other things, prepared an "Implementation Package" for MPs. This valuable resource was disseminated to all MPs, helping to raise awareness about the content and benefits of the code.⁸⁰

Drafting the code was a slow process and implementation was also delayed owing to elections. The key problem during drafting was reaching consensus with the Joint Committee on Administrative Affairs – which was to play a key role in implementing the code – on how to establish complaint procedures in line with domestic legislation, since parliament is not a judicial body. Once these issues were resolved, implementation was held up by amendments, particularly because procedural rules require both houses to pass the code in identical text. In the end, the House of Representatives and the House of Peoples finally adopted amendments to the code in identical texts in September 2011.

The next step was to draft an Implementation Act, which was completed in the second half of 2011 and approved by the Joint Committee on Administrative Affairs. The Implementation Act was rejected by the JCHR, with a request to revise the entire code of conduct. The main arguments involved criticism that the international community had in some way "imposed" the code, but there were also inconsistencies with the Conflict of Interest Law. The JCHR then established a working group to revise the code of conduct and the accompanying Implementation Act. This example demonstrates that adoption by the plenary can sometimes be an onerous process with heated debates. However, such debates can be extremely beneficial in raising awareness of the code and allowing parliament, the media and the public to think through how its various elements will affect parliamentary practice. Adoption by the plenary can also be important for establishing the legitimacy of the code.

Serbia: OSCE Parliamentary Support Programme

The Parliamentary Support Programme of the OSCE Mission to Serbia supports programmes aimed at professional development of parliamentary staff and assists increased transparency of parliamentary work and greater outreach of the parliament towards citizens, civil sector and media.

In 2011 and 2012, the Mission to Serbia worked with the National Assembly of Serbia's Special Committee for the Drafting of a MPs' Code of Conduct. A research paper was drafted to assist the National Assembly of Serbia in developing a document for Serbian MPs. This was followed

⁸⁰ OSCE Mission to Bosnia and Herzegovina, "Code of Conduct Implementation Package, Legislative Strengthening Programme and Parliament Assembly of Bosnia and Herzegovina", June 2008, <<http://www.oscebih.org/Default.aspx?id=4&lang=EN>>. This is a very useful resource, with detailed information on procedures for complaints, adjudication, sanctions and appeal.

by a conference in Belgrade in November 2011, focusing on Standards of Ethics and Conduct for Parliamentarians. The conference was hosted by the OSCE Mission to Serbia and organized by the Serbian National Assembly, ODIHR and USAID. The conference gathered national and international experts, as well as interested MPs and parliamentary staff from Serbia and the wider region. It provided expertise and a platform for debate about the importance of a code of conduct for MPs.

Georgia: developing, reforming and implementing codes of conduct

The former OSCE Mission to Georgia – jointly with ODIHR – supported the Parliament of Georgia in its reform goals, aimed at increasing the capacity of the Parliament to operate in a transparent and professional manner. In response to calls from Parliament to provide assistance to the continuous reform processes, the former OSCE Mission supported the development of the code of conduct, which was implemented by the non-governmental organization, Transparency International Georgia. Discussion on guidelines specified in the code involved a wide range of members of parliament and experts. Building on this initial step, a Conference on “Codes and Standards of Ethics for Parliamentarians”, jointly organized by ODIHR and the Parliament of Georgia, took place on 19 April 2012 in Tbilisi. The conference allowed Georgian MPs and parliamentary staff, as well as their counterparts from a number of neighbouring countries, to explore the issues involved in developing, reforming and implementing ethics regimes for parliaments.

Implementation questions to consider:

- *Should the code have the status of law or be merely advisory?*
 - *Should the code include a broad statement of values or principles?*
 - *Will MPs be required to publicly commit to the code when they enter parliament, e.g., by swearing an oath or signing a document?*
 - *Will a “manual” be developed, with guidance notes, advisory opinions, examples and past cases? Who will draft such notes and opinions?*
-

2.3 Assets and Interests

One of the key objectives of professional conduct regulation is to avoid – or limit – conflicts of interest. According to the OECD Guidelines for Managing Conflict of Interest in the Public Service, a conflict of interest is defined as:

“A conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.”⁸¹

Codes of conduct often require MPs to commit to putting the public interest above private interests, but other rules and tools are used to regulate the details.

There are two main approaches in this area. One method is to ban MPs from taking on certain roles, through provisions in the constitution or dedicated laws on incompatibility or conflict of interest.⁸² This implies that certain roles are inherently incompatible with holding parliamentary office and/or that MPs cannot be trusted to exercise judgment independent of their interests. The alternative is to allow MPs to hold other interests but require them to disclose the details in registers of interests and/or declare them before speaking in parliament on relevant matters. This model grants the MP some discretion to decide when there is a risk of a conflict, although research suggests that, in the United Kingdom at least, the disclosure requirement has not always been well respected.⁸³ The disclosure of interests is increasingly seen as a minimum requirement for parliaments. The 2000 Parliamentary Assembly of the Council of Europe Resolution 1214 attests to growing international consensus on the necessity of a disclosure mechanism for members’ interests as a minimum in regulating parliamentary conduct. The Resolution states that:

“In order successfully to fight corruption, parliaments – in their capacity as a country’s supreme political authority and instance of control – should, where applicable: introduce an annual system for the establishment of a declaration of financial interests by parliamentarians and their direct family.”⁸⁴

However, the effectiveness of disclosure ultimately relies on the ability and capacity of the public, the media and civil society to scrutinize the disclosed interests and judge whether conflicts have occurred. In practice, countries frequently combine the two approaches, prohibiting the holding of some interests but allowing others – as long as the details are disclosed. Another intermediate approach, used in Sweden, is to allow MPs to have certain interests, but require them to exclude or recuse themselves from debates or votes where a conflict of inter-

81 OECD, “OECD Guidelines for managing conflict of interest in the public service”, 2007, p. 2, <<http://www.oecd.org/governance/fightingcorruptioninthepublicsector/39691164.pdf>>.

82 Several OSCE participating States have separate conflict of interest laws, e.g., Latvia has a law on “Prevention of Conflict of Interest in Activities of Public Officials”, 2002, which was introduced because the Corruption Prevention Act was regarded as inadequate in this area.

83 Gay and Leopold note that: “Significant numbers of MPs appeared to regard registration as sufficient declaration of interest, ignoring the specific obligation to declare interests in debate and in committee”. Gay, Oonagh and Leopold, Patricia, *Conduct Unbecoming: The Regulation of Parliamentary Behaviour* (London: Politico’s, 2004).

84 Council of Europe, Parliamentary Assembly of the Council of Europe, “Role of Parliaments in fighting corruption”, Resolution 1214, 2000, <<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/taoo/ERES1214.htm>>.

est might arise.⁸⁵ Likewise in Canada, where there is a dedicated “Conflict of Interest Code”, several standing orders of the House of Commons prohibit members from voting on issues in which they have “direct pecuniary interests.”⁸⁶

Incompatibility laws

Attitudes towards the compatibility of public roles and private roles vary considerably in the OSCE region, with Canada and the United Kingdom historically far more concerned about conflicts of interest when one person holds two public roles, while the United States is more concerned about MPs’ private interests.⁸⁷ Relevant public roles can include being a cabinet minister, being a city or county mayor or member of a regional assembly, or being a manager of a state-owned enterprise. The public role that is most commonly seen as incompatible with holding parliamentary office is that of judicial office, upholding a separation of powers between those who make the law and those who enforce it.

Public roles can be regarded as incompatible with parliamentary office for several reasons, for example:

- In certain countries, where MPs can become cabinet ministers, there is a concern that their will to scrutinize the executive might be impeded by either being part of the government or aspiring to be;⁸⁸
- Where the other role is an elected one, it can be argued that concerns about being re-elected in one role might influence judgements made during the exercise of the other role; and
- It may not be regarded as appropriate for one individual to receive two salaries from public funds.

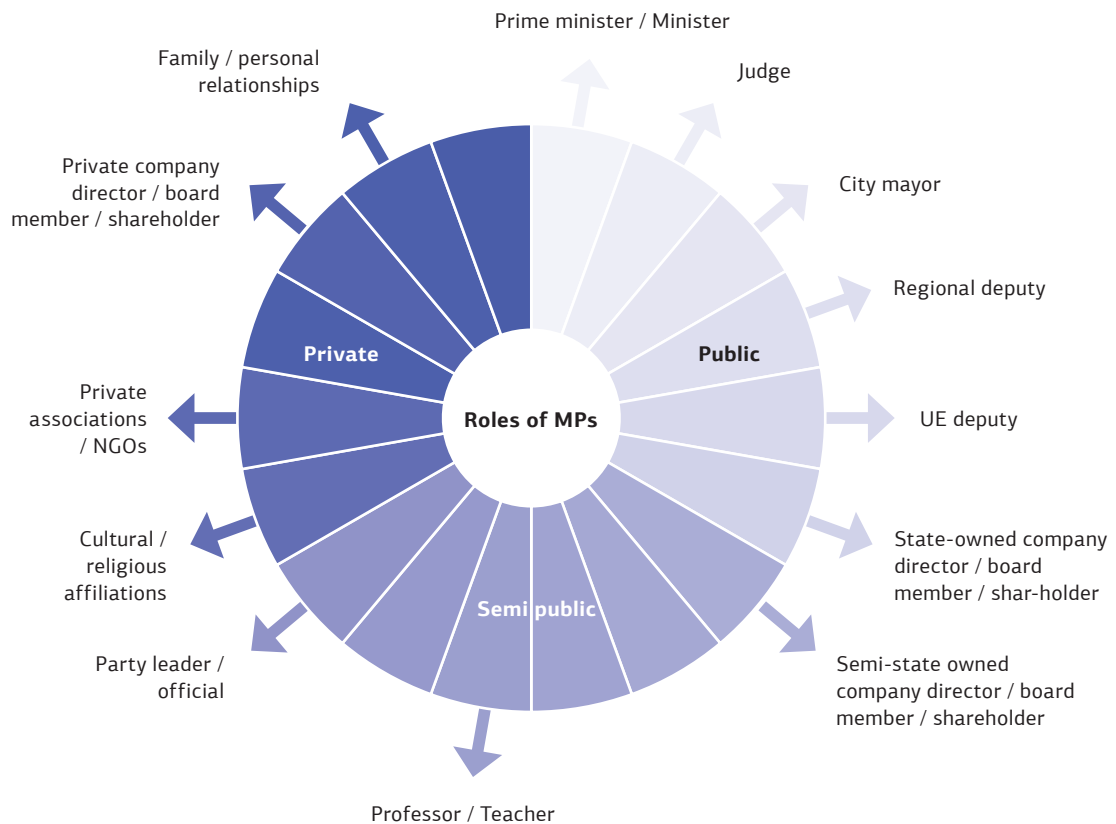
Turning to private interests, in many western European countries, it has been the norm that MPs are permitted to earn income from employment or business, but must declare it (at least above a certain pre-determined level). For example, in the United Kingdom, MPs can be directors of companies and earn income from the role, but they are required to disclose it in the Register of Interests when debating relevant matters. In the United States, meanwhile, numerical or percentage-based limits are utilised. A congressperson can earn outside income, but it should not exceed 15 per cent of pay for Executive Schedule level II (a salary grade for senior federal public offices in the United States).

85 Sweden’s “Law on Registration of Members of Parliament’s Engagements and Economic Interests”, 1996, states that “A member may not participate in the deliberations of the Chamber or be present at a meeting of a committee on a matter which concerns him [or her] personally or a close relative.” As cited in National Democratic Institute, “Legislative Ethics: a Comparative Analysis”, Legislative Research Series Paper #4, Washington DC, 1999, p. 8, <http://www.accessdemocracy.org/files/026_ww_legethics.pdf>.

86 Parliament of Canada, “House of Commons Procedures and Practice – Responsibilities and Conduct of Members”, 2000, <<http://www.parl.gc.ca/MarleauMontpetit/DocumentViewer.aspx?Sec=Cho4&Seq=12&Language=E>>. (Canada Procedures)

87 Stark, Andrew, “Canada’s Upside-Down World of Public-Sector Ethics”, *International Public Management Journal*, Vol. 8/2, 2005, pp. 187–207.

88 Around one-fifth of MPs in the United Kingdom are on the government payroll or dependent on the executive for ministerial positions. See House of Commons, Public Administration Committee of the House of Commons, “Smaller Government: What do Ministers do?”, London, 2011, <<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmpubadm/530/53002.htm>>.

Figure 7: Range of possible interests of MPs

In post-communist countries, by contrast, MPs are often prohibited from owning or running businesses while serving in parliament – e.g., in Armenia, MPs are banned from being “entrepreneurs”.⁸⁹ In Poland, MPs face numerous restrictions on economic activities involving state-owned enterprises and should not be involved in any economic activities where they could profit from state assets or contracts.

Such provisions have arguably been designed, among other reasons, to limit the access of influential businessmen to privileged public or administrative information, as well as to prevent them from strategically seeking parliamentary office purely to gain immunity from prosecution and protect their business interests.

Practices differ widely throughout the OSCE region, as Table 6 illustrates.

⁸⁹ The definition of “entrepreneur” is contested because of a lack of clarity over whether ownership, for example, is necessary. Information provided in an interview with Davit Harutyunyan MP, Chair of the Legal Affairs Committee of the Armenian Parliament, 3 October 2011.

Table 6: Compatibility of various types of interest with the role of legislator ⁹⁰

Country	Public-sector interests			Private interests	
	Minister	Mayor	Judge	Company director/employee	Shareholder
Armenia	Incompatible	Incompatible	Incompatible	Incompatible	Permitted**
Canada	Permitted	Incompatible ⁹¹	Incompatible	Permitted	Permitted
France	Incompatible	Permitted	Incompatible	Permitted	Permitted
Hungary	Permitted	Incompatible*	Incompatible	Permitted	Permitted
United Kingdom	Permitted	Incompatible	Incompatible	Permitted	Permitted
Austria	Permitted***	Permitted	Incompatible ⁹²	Permitted	Permitted
Germany	Incompatible	Incompatible	Incompatible	Permitted	Permitted
Poland	Permitted	Incompatible	Incompatible	Permitted****	Permitted****

* Under discussion

** Managing rights must be transferred to trust management for duration of office⁹³

*** Permitted, but not the norm in practice

**** Incompatible in case of state owned companies

Tools for declaring and disclosing interests

Two main types of tool are used to ensure that potential conflicts are revealed. In a Register of Interests, MPs declare all sources of income and responsibilities that they hold concurrently with office. The information is collected centrally and should be updated frequently. Registers were first introduced in the United States and United Kingdom in the 1970s, and spread to other countries soon after. The format of registers has evolved considerably, however, with online registers increasingly favoured and recommended by the OECD.⁹⁴

The types of interest that need to be registered (or declared) vary, but typically include income (from employment, share dividends, consultancies, directorships and sponsorships), gifts and

⁹⁰ This table was compiled using the IPU database and relevant national constitutions and laws. Countries were selected to illustrate a range of policies. However, it should be noted that it is difficult to collect such information, since it is often embedded in a number of different laws, and difficult to compare these rules across countries, since the definitions of different posts may vary.

⁹¹ Although there are no federal laws that disqualify a municipal mayor (or member of the city council) from submitting his or her candidacy in a federal election, various provincial and municipal laws would require holders of these posts to resign from municipal office before becoming a sitting member of Parliament. Some provincial laws make a sitting MP ineligible to run in a municipal election; requiring them to resign their seat in the House of Commons before their nomination, e.g., Municipal Act of Ontario, section 258(1). Available at: <http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm>.

⁹² The incompatibility is confined to members of the Constitutional Court, the Supreme Court and the Administrative Court.

⁹³ This is a solution that is relatively commonly used. For details of model blind trusts see: <<http://www.oge.gov/Financial-Disclosure/Public-Financial-Disclosure-278/Helpful-Resources/Model-Qualified-Blind-and-Diversified-Trust-Documents/>>.

⁹⁴ *Ibid.*, p.15.

hospitality, and non-pecuniary interests. In the Netherlands, three separate registers exist, all of which are publicly available. One register covers non-parliamentary income and employment, another foreign trips not paid for by parliament, and the third is for gifts.⁹⁵ It is important to remember that merely the *appearance* of a conflict of interest can be damaging. It might be impossible to prove that a certain interest influences an individual's decision one way or another, but merely the suspicion can erode legitimacy. The rules should, therefore, include a clause requiring legislators to declare any other interests that might reasonably be thought to influence their actions, speeches or votes.⁹⁶

Debate: Should MPs be allowed to receive gifts?

Rules about the acceptance of gifts vary considerably among OSCE participating States, but three main approaches are discernible:

- **Ban** – Some countries forbid MPs from accepting gifts, e.g., United States members of Congress may not accept gifts worth more than 50 dollars.
 - **Disclosure** – Other countries allow the acceptance of gifts of any value, but require that they must be declared, as in the Czech Republic.
 - **Hybrid** – A third group of countries allows *any* gift to be received and requires that gifts are declared *only if* they exceed a certain value, e.g., 50 euros in the Netherlands (although some parties in the Netherlands impose tighter rules on their MPs).
-

Asset declarations are a more recent innovation. MPs are often required to provide details of their wealth or assets when they join and leave parliament, as well as regular updates. This makes it possible to assess whether an MP appears to be accumulating wealth or assets from unknown sources. Asset declarations are becoming increasingly common, often introduced with a view to reducing corruption in the bureaucracy, but frequently extended to elected officials. There is also a trend towards requiring MPs to declare *liabilities*, since independence might also be compromised by receiving credit at below-market rate or being indebted to other parties.

All new EU member states, who joined in 2004 and 2007, had adopted some form of register or declaration by 2000. Many other states in Eastern Europe, Central Asia and the Caucasus have followed suit. In some systems, even *candidates* for elected office are required to submit declarations, as in Bosnia-Herzegovina. This is also a practice that political parties can adopt as a confidence-building measure, as in the United Kingdom prior to the 2010 election.

Electronic submission can significantly improve compliance, reduce the cost of administration and increase access and accountability. This has been seen in some countries that have introduced such procedures. In Argentina (not an OSCE participating State), for example, compli-

95 House of Representatives of the Netherlands, "Rules of Procedure", 2012, Chapter VIIa, section 150a. There is no official sanction for failing to list an item.

96 Westminster Foundation for Democracy (WFD) and Global Organization of Parliamentarians against Corruption (GOPAC), "Handbook on Parliamentary Ethics and Conduct, a Guide for Parliamentarians", London, 2009, <http://www.wfd.org/upload/docs/political_guidebook_20100630.pdf>. (WFD-GOPAC)

ance increased from 67 per cent to 99 per cent in less than a year after the introduction of an electronic system for financial disclosure.⁹⁷ However, there are still several OSCE participating States where a declaration of interests can only be submitted in paper.⁹⁸ Registers and declarations also need to be updated frequently, albeit without placing an undue burden upon parliamentarians. The OECD suggests that declared information should be collected “as often as is reasonably needed.”⁹⁹ Yet practices vary widely. In Hungary, financial interests need only be disclosed when first taking office (within 30 days) and again at the end of the Member’s mandate. In the Czech Republic, members must file financial reports annually in June. In Spain, interests should be submitted “whenever circumstances change”, leaving it to the member’s judgement to decide when this occurs.¹⁰⁰

Concerns about privacy

In many countries, it is becoming the norm for registers and asset declarations to be routinely made available to the public, often on the parliament’s website (as in Poland) or in parliamentary visitor information centres (as in the United Kingdom) or on the websites of other state bodies (in Georgia, the asset declarations of MPs are available on the website of the Public Service Bureau).¹⁰¹ In the United States, the register is not online, but anyone may inspect or procure a copy upon providing their identity details (although the information may not be used for commercial reasons or for soliciting money for political purposes or otherwise).

However, some commentators warn that excessive disclosure requirements might infringe upon the right to privacy. This might deter otherwise qualified candidates from running for office¹⁰² and could even present a risk to personal security or property.¹⁰³ Hence, in many countries, disclosure is partial or limited. In Canada, financial interests are disclosed to the governing ethics commissioner or office on a confidential basis. The commissioner then develops a summary for disclosure on the Public Registry, which is available to all citizens. In France, members of parliament are expected to disclose their “declaration of estate” only to the Committee for Financial Transparency in Political Life, a special semi-judicial monitoring body, and the register of interests is available only to monitoring bodies.¹⁰⁴ The OECD recommends that, at a minimum: “declared data should be available to investigators for detecting cases of possible criminal offences”.¹⁰⁵

Moreover, research shows that declarations are most effective in reducing perceived corruption when they are made available to the public, perhaps because this facilitates scrutiny by civil society.¹⁰⁶ Indeed, in a number of countries, NGOs are taking on the responsibility of scru-

97 OECD Asset Declarations, *op. cit.*, note 9, p.70.

98 *Ibid.*, p.70.

99 *Ibid.*, p.15.

100 Spain Election Law, Article 160(1), <<http://legislationline.org/topics/country/2/topic/6>>.

101 TI Georgia Assessment, *op. cit.*, note 35, p. 37.

102 National Democratic Institute, *Legislative Ethics: a Comparative Analysis*, Legislative Research Series Paper #4 (Washington DC, 1999), p. 11, <http://www.accessdemocracy.org/files/o26_vw_legethics.pdf>. (NDI Legislative Ethics)

103 For example, one participant at the OSCE conference on Standards of Ethics and Conduct for Parliamentarians, in Belgrade in November 2011, noted that MPs were concerned about the risk of property theft after details of their assets – including fine art – were published by the media.

104 NDI Legislative Ethics, *op. cit.*, note 103, p. 37.

105 OECD Asset Declarations, *op. cit.*, note 9.

106 Djankov, Simeon, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, „National Bureau of Economic Research, “Disclosure by Politicians”, 2009, Working Paper 14703, <<http://www.nber.org/papers/w14703.pdf>>.

tinizing declarations. In Slovakia, MPs are required to submit asset declarations by law, but these declarations lack the detail necessary to enable full scrutiny. However, an NGO known as the Fair Play Alliance has established a programme of activities designed to increase public awareness of asset declarations, it:

- combines data from asset declarations with other public information to build a comprehensive open database;
- encourages electoral candidates to submit more complete online asset declarations; and
- analyses the asset declarations and the way that public money is spent, with a view to uncovering conflicts of interest.¹⁰⁷

In Austria, a website – www.meineabgeordneten.at – was recently established that compares individual MPs’ asset declarations to other publicly available information about their interests. Their results suggest that around 10 per cent of MPs forget – or omit – to declare income from outside jobs. A television programme in Austria also drew attention to the fact that information on MPs’ interests was difficult to find on the official website of the parliament. The parliament immediately responded by placing the relevant information prominently on the welcome page of its website.

Implementation questions to consider:

- Which types of interest or role should be banned outright?
 - Which types of interest should be allowed, subject to the disclosure of details or recusal from relevant debates?
 - Who will have access to the information? Have concerns about the MP’s right to privacy been adequately addressed?
 - Should there be penalties for failing to submit information or submitting incorrect information?
 - Are there mechanisms in place for verifying submissions?
-

2.4 Allowances, Expenses and Parliamentary Resources

Media interest in parliamentary ethics often focuses on alleged misuse of parliamentary resources or public money by MPs. This can relate to MPs’ salaries or expenses, the recruitment of staff or the use of parliamentary resources for personal or party political purposes. One source of controversy is the question of whether MPs should have the power to set and increase their own salaries. Such a power is arguably fundamental to MPs’ independence from the executive. However, the public is likely to regard it as an inherent conflict of interest and, indeed, parliaments frequently refrain from increasing their own salaries due to fears about public

¹⁰⁷ National Democratic Institute and World Bank, “Strengthening Parliamentary Accountability, Citizen Engagement and Access to Information: A Global Survey of Parliamentary Monitoring Organizations”, 2011, p. 41, <<http://www.ndi.org/files/governance-parliamentary-monitoring-organizations-survey-september-2011.pdf>>. Also see Fair-Play Alliance: <http://www.fair-play.sk/index_en.php>.

disdain for pay rises.¹⁰⁸ This can mean that MPs' salaries fail to keep up with their equivalents. That, in turn, raises a risk that it becomes more difficult to attract qualified people for the sometimes challenging work of being a legislator.

However, perhaps more importantly, low salaries also increase the risk that MPs will regard their other entitlements – allowances and expenses – as an opportunity to extract additional income from the state. This, for example, appears to be the case with MEPs who sign attendance lists only to claim expenses. It was also arguably a contributing factor to major abuse of the expenses and allowances system in the United Kingdom that came to light in May 2009, when the Daily Telegraph started to publish expense claims that appeared excessive and inappropriate. Most controversially, many MPs had “switched” their second home addresses to allow them to claim expenses on different properties at different times.¹⁰⁹

Under pressure to ensure that nothing similar could happen again, the United Kingdom parliament handed the responsibility for expenses claims and MPs' salaries over to a new independent body, the Independent Parliamentary Standards Authority (IPSA). However, the ability of IPSA to restore public confidence has been inhibited by criticism of the agency as expensive and inefficient.¹¹⁰ This underlines the importance of undertaking a wide-ranging consultation when reforming standards.

In Hungary, a recent proposal aims to abolish transport and rent allowances and instead provide payment cards that can be used to buy fuel or pay rent on apartments, for those who need them.¹¹¹ This aims to resolve an apparent discrepancy – some MPs claim expenses for commuting between their home and Budapest, despite also receiving a free ticket for public transport, and for renting apartments in Budapest, even if they already own their own apartment in the capital.

The employment of family members as secretaries or researchers also raises concerns that MPs are using public money to boost family income. Although this is common practice in some parliaments (where staff are not drawn from the civil service), a few countries have started to regulate the employment of family members, so as to prevent nepotism. In Austria, it is now forbidden for MPs in the lower house to employ close relatives as personal assistants whose salaries are paid from public funds.¹¹² In the United Kingdom, family members can be employed by MPs, but this must be declared.

¹⁰⁸ This issue is resolved somewhat in the United States, where Congress votes to increase the salaries of Congress, but changes come into effect only in the subsequent term.

¹⁰⁹ The Daily Telegraph, “MPs' expenses: the timeline”, 3 October, 2010, <<http://www.telegraph.co.uk/news/newstopics/mps-expenses/5335266/MPs-expenses-the-timeline.html>>.

¹¹⁰ According to Margaret Hodge, MP and Chair of the Committee of Public Accounts: “Although there has been a 15 per cent reduction in the amount paid out for MPs' expenses, that cannot be claimed as an efficiency saving while so many MPs report that they are put off from claiming legitimate expenses because the claims process is so bureaucratic. [...] The National Audit Office estimates that the combined cost of time spent on making claims is around £2.4 million (2.87 million euro) a year. It is also time taken away from serving constituents.” Available at: <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/>>.

¹¹¹ Interview by telephone with Peter Hack, Professor of Law, ELTE University, Budapest (Eotvos Lorand Tudományegyetem), 14 October 2011.

¹¹² The Parliamentary Employees Law bans the employment of “close relatives”, defining the term to include cousins and co-habiting partners in Article 2; see <<http://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR12013826/NOR12013826.html>> (in German).

Scandals sometimes arise where MPs have used paper with the official parliamentary letter-head to make personal requests. This is ethically questionable because it suggests that MPs are seeking to use their status as parliamentarians to influence private business. Some countries include rules forbidding this in their codes of conduct or regulatory systems – in Spain, members are barred from invoking their position for any commercial, industrial or professional activity. Nor should parliamentary administrative resources, including staff, be used for party political purposes, such as campaigning. Although such a separation can prove hard to achieve in everyday political work, Scotland provides a case of good practice. This separation is set out in the Scottish code of conduct, with members prohibited from placing parliamentary staff in a position “which would conflict with or call into question their political impartiality, or which could give rise to criticism that people paid from public funds are being used for party political purposes.”¹¹³

Implementation questions to consider:

- *Who should set the salaries of MPs, and according to what guidelines?*
 - *Should salaries vary according to the responsibilities of an MP, e.g., whether he or she is a member of a committee or not?*
 - *Should allowances differ for different types of MPs, e.g., list or constituency?*
 - *Should MPs have autonomy to make purchases, or should expenditure be centralized so that MPs are issued payment cards or vouchers?*
 - *Is it acceptable for MPs to employ family members as staff?*
 - *Can a code ensure that incumbent MPs do not use parliamentary resources for their electoral campaigns?*
-

2.5 Relations with Lobbyists

In recent years, lobbying has become a relevant element for discussion to those concerned with parliamentary ethical standards. The OECD's Recommendation on Principles for Transparency and Integrity in Lobbying defines lobbying as “the oral or written communication with a public official to influence legislation, policy or administrative decisions”.¹¹⁴ Indeed, interaction of individuals or groups with the legislators in order to advocate for specific interests and influence political decisions can present some risks in any democratic system.

Although the practice of lobbying is an integral part of any democracy, and lobbyists can perform a valuable role to inform legislators on matters of public interest, an illicit use of influence in the political system can be extremely dangerous. At least three broad reasons for concern exist:

- The risk of inappropriate interactions between lobbyists and politicians, leading to exchange of favours or bribery;

¹¹³ Scottish Code, *op. cit.*, note 62, p.49.

¹¹⁴ Organization for Economic Co-Operation and Development, Recommendations of the Council on Principles for Transparency and Integrity in Lobbying, 2010, <<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=256&InstrumentPID=%20250>>.

- Concerns about the role exerted by corporate and powerful groups of interests, which can potentially result in an unbalanced distribution of political resources and consideration; and
- A growing distrust within the national electorate, who may perceive that key policy decisions are made in a non-transparent and unfair manner, depriving the electorate of any say over the national political agenda.

Transparency registry: the case of the European Parliament

Following the recent “*cash for laws*” scandal in March 2011, the European Parliament (EP) established a working group to draw up a new set of rules to govern the access and behavior of lobbyists and to formulate a code of conduct for Members of the European Parliament (MEPs), once again bringing the issues of transparency and ethical standards to the forefront.

The lobbying sting involved four MEPs, who were accused of agreeing to accept money from Sunday Times journalists, posing as lobbyists, in return for watering down banking reform legislation. Presenting themselves as banking lobbyists, the journalists attempted to bribe MEPs with offers of cash in return for tabling amendments to draft EU legislation. The scandal was highly damaging to the EP image, and the EP President Jerzy Buzek quickly used the momentum to reform the EP Rules of Procedure.

As a result, an inter-institutional agreement between the EP and the European Commission was signed in June 2011. This agreement led to a common Transparency Registry, which provides citizens with direct access to information about those engaged in activities aimed at influencing the EU decision-making process. The Transparency Registry offers a single code of conduct binding all organizations and self-employed individuals who accept to “play by the rules” in full respect of ethical principles.¹¹⁵ Registrants to the Transparency Registry shall provide:

- Personal data, including the names of people requesting access badges for EP buildings;
- Legislative proposals covered by the registrant’s activities; and
- An estimate of the cost of the registrant’s activities or their overall budget, including funding received from the EU institutions.

The Transparency Registry does not include information about a given lobbyist’s specific interest. More importantly, registration is voluntary; thus lobbying without registration is allowed. As of August 2012, despite having 5,200 individuals registered, a considerably higher number of lobbyists are thought to be active in conjunction with EU institutions.¹¹⁶

¹¹⁵ European Parliament, European Transparency Registry. Available at: <http://europa.eu/transparency-register/index_en.htm>.

¹¹⁶ “EU Lobbyist Register Gives Incomplete Picture”, *EU Observer*, June 2012, <<http://euobserver.com/institutional/116742>>.

To strike a balance between the need to exert pressure on politicians on specific public issues while ensuring the transparency and accountability of lobbying, more regulations on lobbying should be introduced.

If we examine the existing regulations across the OSCE region, lobbying regulation systems tend to include some of the following aspects:

- **Registration of lobbyists** – Mandatory or voluntary rules on individual registration in a dedicated registry, with a varying range of details. Notification of developments in policy areas of interest to the particular registrant can be an incentive to register;
- **Disclosure of tactics** – Requirements to disclose how lobbyists try to influence the political agenda (contacts, issues, interests etc.);
- **Public access to registration lists** – Lobbyist registries can be made available for public consultation with appropriate restrictions. Online access to these lists can enhance both transparency and efficiency of the system;
- **Spending disclosure** – Requirements to provide information regarding income and spending related to lobbying activities; and
- **Revolving-door provision** – Requirements establishing a “cooling off” period during which former legislators may not become lobbyists,.

How strict these regulatory provisions are can differ significantly from country to country, often featuring dissimilar disclosure requirements. However, the ethical peril associated with lobbying practices has been internationally recognised, with the UN Convention against Corruption calling for an obligation on State Parties to consider criminalising trading influence. Indeed, specific rules to formalise an otherwise highly informal process should be designed to strengthen ethical standards and procedures.

Implementation questions to consider:

- *Are most lobbying activities carried out in a transparent manner?*
 - *What kind of information should be provided in a lobbyists’ registry? Should it be public? Should it include frequency of contact?*
 - *Should the lobbyists’ spending in connection with their professional activities be made publicly available?*
 - *Should lobbying regulations be backed by sanctions?*
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2.6 Other Areas that may Require Regulation

There are several other areas where rules to regulate MPs’ conduct are commonly put in place. However, these areas are more controversial and the question of whether or not regulation is appropriate is best settled in the local context. For example, systems often include guidance or rules about demeanour or proper conduct in the chamber. The Westminster Foundation for Democracy, Global Parliamentarians Against Corruption (WFD-GOPAC) *Handbook on*

Parliamentary Ethics and Conduct considers such rules to be a “cornerstone” of any ethics regime, particularly in the early years of a legislature, when it is possible that:

“There is no general acceptance or common understanding of how the rules of procedure should be interpreted. In fact, they are highly-contested by MPs, so that debate is fractious and the Speaker’s authority frequently questioned.”¹¹⁷

There may be rules on the appropriate use of parliamentary time, so as to avoid filibustering, when individual members dominate a debate or digress from the issue in question, perhaps to exploit television coverage of the session. Péter Hack, a former MP in Hungary, recalled that such behaviour was common in the first, post-transition Hungarian parliament, but was solved through reform of the House rules:

“[This problem] happened in the first four years, but then in 1994 we adopted new House rules which helped to solve this problem. We introduced a short pre-agenda debate before the beginning of the day. It gave fractions an opportunity to raise issues and react to that day’s events, but it was strictly time limited. Within the last decade there is a tradition that mainly the Monday afternoon session starts with that general debate and sometimes the government or PM has a short speech about it. But there are strict time limits for reactions. Also the chairman of the parliament has the right to withdraw the MP if he or she is off topic.”¹¹⁸

However, although changes in the rules can help to make parliament more efficient and ensure fair access to parliamentary time, members should also be encouraged to act responsibly in adhering to the rules. Thomas Mann and Norman Ornstein detail one example in the United States Senate where the routine limit of 15 minutes for a vote was ignored. Not only did the Speaker allow the vote to stay open for two hours and 51 minutes, until the Republicans had secured a majority, but one representative subsequently accused his own party’s leaders of trying to bribe and threaten him during the intervening hours in order to secure his vote.¹¹⁹ Such accounts can be extremely damaging to the reputations of parliaments.

There may also be rules about attendance at debates. The Parliament of Canada Act, for example, obliges members to provide a tally of their attendance rate at the end of each month and makes deductions from the member’s allowance if they have been absent for more than 21 sittings.¹²⁰ Rules requiring attendance or setting high quorums can help to address a type of fraud known as “ghost voting”, whereby votes are cast on behalf of members of parliament who are not physically present in the chamber. The practice is facilitated where voting is electronic and requires only the push of a button. Members of the same party often agree to perform ghost votes for one another, but members of opposing parties can also cast ghost votes which run counter to the beliefs of the absent MP. There have been cases of members rigging their voting buttons to allow them to be triggered remotely.

The problem of ghost voting has recently arisen in a number of OSCE participating States and has been the subject of a number of videos – showing deputies pushing several voting buttons in succession – that have been widely viewed on the Internet. While some individuals have sought to defend the practice as improving efficiency without changing the outcome of the

¹¹⁷ WFD-GOPAC, *op. cit.*, note 96, p. 6.

¹¹⁸ Interview conducted by telephone for this report, 14 October 2011.

¹¹⁹ See the opening chapter of Mann, Thomas E. and Ornstein, Norman J., *The Broken Branch: How Congress is Failing America and How to get It Back on Track* (Oxford: Oxford University Press, 2006).

¹²⁰ Canada Procedures, *op. cit.*, note 87.

vote, there is clearly great potential for abuse.¹²¹ Some countries explicitly prohibit the practice in their parliamentary rules of procedure – for example Bulgaria¹²² and Georgia¹²³, while Lithuania’s Statute of the Seimas warns against “dishonest voting”.¹²⁴ Countries may wish to consider tough sanctions for MPs who cast ghost votes or ask their colleagues to cast votes on their behalf.

Many codes of conduct include a commitment to treating one’s colleagues with respect or using appropriate parliamentary language, and it is common to ban the use of offensive or discriminatory language. Apart from encouraging higher quality debate, such stipulations help to ensure an atmosphere that is welcoming for a diverse cross-section of society, as well as members of minorities. Numerous examples suggest that under-represented or minority groups often suffer from discriminatory or offensive language.

Many parliaments in the OSCE region have rules about appropriate parliamentary language. For example, the Latvian code of conduct requires MPs to avoid “using words, gestures and other actions that can be insulting” as well as “offensive or otherwise inappropriate statements that may dishonour the Saeima.”¹²⁵ It also seeks to enshrine a certain kind of political culture, stating that an MP “bases his/her decisions on facts and their fair interpretation, as well as on logical argumentation [...]” The code also encourages tolerance and non-discrimination: “[An MP] observes the principles of human rights and does not appeal to race, gender, skin colour, nationality, language, religious beliefs, social origin or state of health to justify his/her argumentation.”¹²⁶

The code also includes provisions on insulting gestures and on appearing in public life under the influence of alcohol.¹²⁷

The United Kingdom House of Commons offers a definition of what constitutes unparliamentary language:

“Unparliamentary language breaks the rules of politeness in the House of Commons Chamber. Part of the Speaker’s role is to ensure that MPs do not use insulting or rude language and do not accuse each other of lying, being drunk or misrepresenting each other’s words. Words to which objection has been taken by the Speaker over the years include blackguard, coward, git, guttersnipe, hooligan, rat, swine, stoolpigeon and traitor. The Speaker will direct an MP who has used unparliamentary language to withdraw it. Refusal to withdraw a comment might lead to an MP being disciplined. The Speaker could ‘name’ the Member. MPs sometimes use considerable ingenuity to get around the rules; for example Winston Churchill famously used the phrase “terminological inexactitude” to mean ‘lie’.”¹²⁸

121 See for example, this article on ghost voting in the state legislature in East Tennessee:

<<http://www.wate.com/story/18559203/east-tennessee-lawmakers-admit-to-ghost-voting-in-legislature>>.

122 National Assembly of the Republic of Bulgaria, Rules of Organization and Procedure of the National Assembly (2012), Article 11/4, <<http://www.parliament.bg/en/rulesoftheorganisations/>>.

123 Transparency International Georgia, “Ghost Voting in the Georgian Parliament”, 2011, <<http://transparency.ge/en/node/1302>>.

124 Lithuanian Parliament, “Statute of the Seimas of the Republic of Lithuania”, 2010, Article 20 (2), <http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_e?p_id=389585>.

125 Latvian Parliament, “Rules of Procedures of the Saeima”, 2006, p. 36, <<http://www.saeima.lv/en/legislation/rules-of-procedure/>>.

126 *Ibid.*, pp. 36–37.

127 *Ibid.*, pp. 36–37.

128 Excerpt from United Kingdom House of Commons, “Glossary”.

Available at: <<http://www.parliament.uk/site-information/glossary/unparliamentary-language/>>.

In Canada, meanwhile, the Compendium states that:

*“The use of offensive, provocative or threatening language in the House is strictly forbidden. Personal attacks, insults and obscene language or words are not in order. In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking; the person to whom the words were directed; the degree of provocation; and, most importantly, whether or not the remarks created disorder in the Chamber. Thus, language deemed unparliamentary one day may not necessarily be deemed unparliamentary on another day. (...) Should the Speaker determine that offensive or disorderly language has been used, the Member will be requested to withdraw the unparliamentary word or phrase. The Member must rise in his or her place to retract the words unequivocally.”*¹²⁹

Gender equality in political and public life

A number of OSCE Commitments relate to the need to promote gender equality in political and public life. An OSCE Athens Ministerial Council Decision from 2009 calls on the participating States to:¹³⁰

“Consider providing for specific measures to achieve the goal of gender balance in all legislative, judicial and executive bodies, including security services, such as police services;

Consider possible legislative measures, which would facilitate a more balanced participation of women and men in political and public life and especially in decision-making;

Encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balanced representation in elected public offices at all levels of decision-making; (...)

Develop and introduce where necessary open and participatory processes that enhance participation of women and men in all phases of developing legislation, programmes and policies [...]”

In addition to these OSCE commitments, the Council of Europe’s Parliamentary Assembly calls on national parliaments to “encourage members of parliament to adopt non-sexist language and not to resort to sexist stereotypes in the course of their parliamentary activities.”¹³¹

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, to which 23 countries have signed (as of October 2012), including Germany, Italy, France and Ukraine, commits signatories to criminalize or impose other sanctions for “unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”¹³² Another clause outlaws “psychological

¹²⁹ Excerpt from Canadian House of Commons, “Compendium – Rules of Debate” 2006, <http://www.parl.gc.ca/About/House/compendium/web-content/c_d_rulesdebate-e.htm>.

¹³⁰ OSCE Ministerial Council, Decision No. 7/09, “Women’s Participation in Political and Public Life,” Athens, 2 December, 2009, <<http://www.osce.org/mc/40710>>.

¹³¹ Council of Europe, Parliamentary Assembly of the Council of Europe, “Combating Sexist Stereotypes in the Media”, 2010, <<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/doc10/edoc12267.htm>>.

¹³² Council of Europe, “Convention on Preventing and Combating Violence Against Women and Domestic Violence”, 2011, <http://www.coe.int/t/dghl/standardsetting/convention-violence/default_EN.asp>.

violence”, defined as “seriously impairing a person’s psychological integrity through coercion or threats.” This suggests that serious bullying could be covered by new laws.

However, despite various international commitments, the use of discriminatory language continues to be relatively common in OSCE parliaments and MPs are rarely disciplined for using such language. A Inter-Parliamentary Union (IPU) report warns that sexual harassment cases involving parliamentarians often go unpunished, as the officials seek to use their immunity as a shield.¹³³

In addition to upholding rules about non-discrimination, it is important to use gender-sensitive language in codes. The IPU report also has lamented the fact that gender equality is rarely mentioned in codes of conduct, yet gender issues can be highly relevant to rules about conduct. For example, rules about attendance should find ways to take account of different needs. As a recent publication commissioned by ODIHR, *Gender Equality in Elected Office: A Six-Step Action Plan*, notes:

“It is insufficient to get more women candidates into office if the standard rules and procedures of democratic bodies are gendered and thus prevent women from operating effectively as elected representatives. Thus, encouraging gender-sensitive rules and procedures in elected bodies is also important, both through integrating gender issues into all parliamentary committees, debates, action plans, commissions, reports, and legislation, as well as through reviewing standard working conditions and operational cultures to make sure that there are equal opportunities for women and men members.”¹³⁴

It may also be considered desirable to include rules or guidelines on dress code, i.e., what kind of clothes MPs should wear in the chamber or when conducting parliamentary business. This is considered by many to encroach too far on the individual freedom of MPs, and is arguably irrelevant to whether they perform their role effectively. On the other hand, some might feel that a basic level of decorum needs to be maintained. Such issues can also have political relevance, as when, for example, MPs of extremist or nationalist parties attend parliament wearing uniforms or symbols of an ideological cause, which may cause offence to other parliamentarians or to the public.

Codes of conduct sometimes regulate the MP’s role as a constituency representative. The Scottish code of conduct, for example, provides extensive guidance on how MPs should relate to the citizens of their constituencies, in particular whenever an MP has promised to examine or investigate an issue raised by a constituent.¹³⁵ Such rules directly improve accountability by creating a benchmark against which constituents can judge an MP’s conduct. The Maltese code guards against potential conflicts that arise when an MP is also a minister:

“While it is recognized that in the local situation it is difficult to distinguish in a clear-cut way between the work of a Minister as such and his activity as a Member of Parliament representing a certain electoral district and its constituents, a Minister is in duty bound to ensure that Government funds and facilities are not used by him in an untoward and irresponsible way while he is carrying out his duties as a Member of Parliament.”¹³⁶ ... “When a Minister needs to take decisions (in a particular

133 Inter-Parliamentary Union, “Gender-Sensitive Parliaments: A Global Review of Good Practice”, 2011, Reports and Documents. No. 65–208, p. 70, <<http://www.ipu.org/pdf/publications/gsp11-e.pdf>>.

134 Norris, Pippa and Krook, Lena. *Gender Equality in Elected Office: A Six-Step Action Plan* (Warsaw: ODIHR, 2011), p. 54, <<http://www.osce.org/odihr/78432>>.

135 Scottish Code, *op. cit.*, note 64, section 8.

136 Malta Code, *op. cit.*, note 66.

department for which he is responsible) which may have a strong impact on his constituency, he must take all necessary precautions to avoid all possible conflicts of interest.”¹³⁷

Codes can also be used to regulate the treatment of parliamentary staff, imposing duties of respect and courtesy, above and beyond legal requirements, to avoid discrimination and harassment. For example, the code of conduct of the Scottish parliament states that,

“Parliamentary staff will treat members with courtesy and respect. Members must show them the same consideration. Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of members will be taken seriously and investigated.”¹³⁸

A particularly controversial area concerns the careers of MPs once they leave office, in their “post-public employment”. This is because an MP’s plans for his or her future career can influence how he or she behaves while in parliament. For example, MPs might abuse their power to favour a certain company, with a view to ingratiating themselves and gaining future employment. Alternatively, once working in the private sector, they might influence former colleagues to favour their new employer. The “revolving door”, which refers to the practice of individuals moving between parliament or government jobs and business roles in quick succession,¹³⁹ raises several different risks of conflict of interest, including abuse of office, undue influence, profiteering, switching sides and regulatory capture.¹⁴⁰

Some sectors of industry are particularly vulnerable. Defence, energy, transport and health care companies are frequent employment destinations for former ministers, civil servants and MPs. These are all areas where government is a key buyer and, therefore, where it is easy for conflicts of interest to arise. It may be necessary to impose tough restrictions on individuals with responsibilities in these areas, in order to protect the public interest.

Some European countries have introduced primary legislation to deal with the revolving door. It is rare for public officials to be banned outright from taking on private-sector jobs, but they may be required to seek approval before accepting employment or to wait for a certain period – a “cooling off period” – before moving into the private sector. For example, Norway requires politicians to wait six months after leaving office before taking up a private-sector role. Serbia’s Anti-Corruption Agency Act prohibits public officials from employment with any organisation engaged in activity relating to the office formerly held for two years after leaving office. Elected officials are excluded from this prohibition.¹⁴¹ The rationale for such “cooling off periods” is that the capacity to exercise undue influence or use information learned while in office decays over time.

However, while post-public employment is commonly regulated for public officials employed in the executive branch, some argue that it is inappropriate to regulate the careers of former MPs in this way. The average MP is privy to less confidential information than government

¹³⁷ *Ibid.*, Art. 27.

¹³⁸ Scottish Code, *op. cit.*, note 64, p. 49.

¹³⁹ This is called “pantouflage” or “cocooning” in France, and as “amakudari” (parachuting from heaven) in Japan.

¹⁴⁰ For definitions and a discussion of this issue, see Transparency International UK, “Cabs for Hire? Fixing the Revolving Door Between Government and Business”, 2011, <<http://www.transparency.org.uk/our-work/publications/10-publications/132-cabs-for-hire-fixing-the-revolving-door-between-government-and-business>>.

¹⁴¹ Serbia Official Gazette of the RS, “Anti-Corruption Agency Act”, No. 97/08, 27 October 2008, Article 38, <<http://www.osce.org/serbia/35100>>.

employees, and may have little influence over policy. Risks are greater where MPs are also ministers or committee chairs and have access to insider information. It can also be argued that tough regulation imposes unfair constraints on individuals' capacity to pursue their careers, and might have the unintended consequence of deterring individuals from seeking public office. Many countries prefer the "soft-law" approach of including recommendations about post-public employment in non-binding codes of conduct, as in Ireland and Slovakia.¹⁴²

Implementation questions to consider:

- *Should demeanour issues be set out in rules or left to informal norms?*
 - *Are practices occurring that disrupt parliament and, if so, can the rules be changed to address those?*
 - *Have rules been established in a way that gives full consideration to gender equality?*
 - *Which types of MP are most at risk of "revolving door" conflicts of interest?*
 - *Is it legitimate to restrict the future employment prospects of MPs?*
-

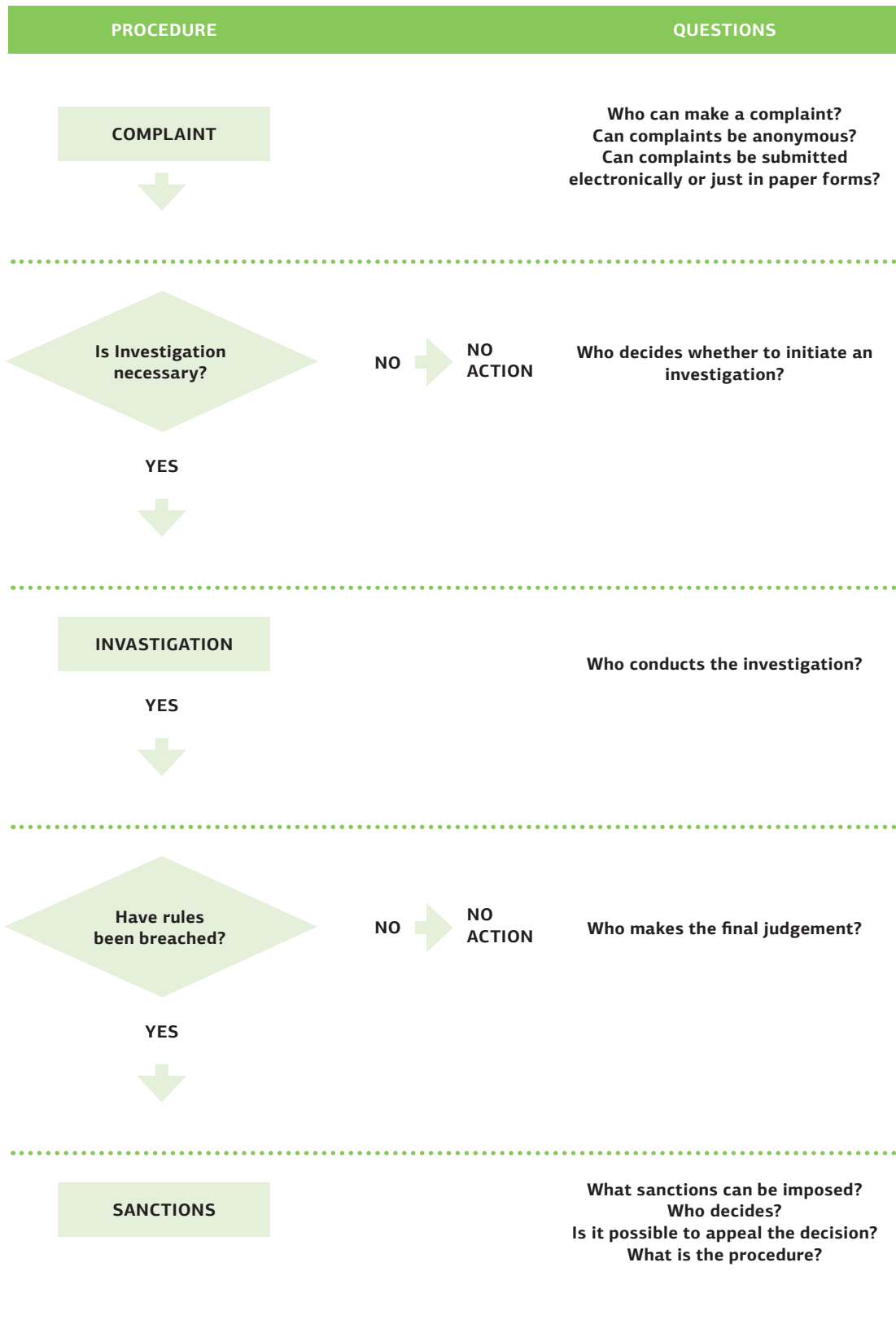
¹⁴² Transparency International UK, *op. cit.*, note 140.

Part Three: Monitoring and Enforcement

In a transparent parliamentary democracy, most MPs are aware of the ethical standards they should abide by. In any system, however, there will occasionally be breaches of the rules or behaviour that appears to contravene ethical principles. Hence, institutions and procedures are needed to monitor and enforce parliamentary standards.

There are three essential elements to this process: an initial complaint about the conduct of one or more MPs; an investigation to establish the facts and enable a decision as to whether rules or norms have been breached; and, where misconduct is found to have occurred, the imposition of appropriate sanctions. The basic elements of the procedure are summarized in Figure 8 below.

Figure 8: Monitoring and Enforcement



However, these functions can be carried out by a number of different institutions. This will depend partly on whether self-regulation by parliaments is preferred to external regulation, or whether the aim is to achieve a mix of the two. Within these categories, there are many possible enforcement bodies. Below we consider the elements one-by-one and discuss the issues raised at each stage.

3.1 Making a Complaint

The right to file a complaint and then to initiate an investigation or inquiry may be given to the general public, or to MPs, or both. The following examples demonstrate a range of approaches:

- In the United Kingdom, the Commissioner for Standards can only initiate an investigation on a matter after receiving a formal complaint (and cannot act if the complaint was made anonymously), although the Committee on Standards in Public Life has recommended that the Commissioner be granted the power to initiate investigations *ex officio* (i.e. by his or her own initiative).¹⁴³
- In the United States Congress, an investigation can be initiated if a complaint is made against a member by another member or upon the agreement of the most senior two members of the Ethics Committee. Ordinary citizens may also file complaints directly to the Ethics Committee. However, in practice, it is common for the general public to route complaints through members.
- In Poland, any MP, parliamentary body or other entity may submit a complaint to the Committee on Deputy Ethics. The Committee may also take up a matter on its own initiative. The Committee is empowered to decide whether to pursue the complaint, but must inform the complainant of the decision.
- In Germany, the President of the Bundestag is empowered to initiate investigations into possible breaches of the code of conduct.

3.2 Investigating Complaints

Once a complaint has been registered, it is usually necessary to investigate the claim and to make a decision as to whether misconduct has occurred.¹⁴⁴ In setting up institutions to perform these functions, the following questions are important:

- Should the institution(s) that carry out investigation and adjudication be based within parliament itself (as in a self-regulating system) or, rather, be external to parliament?

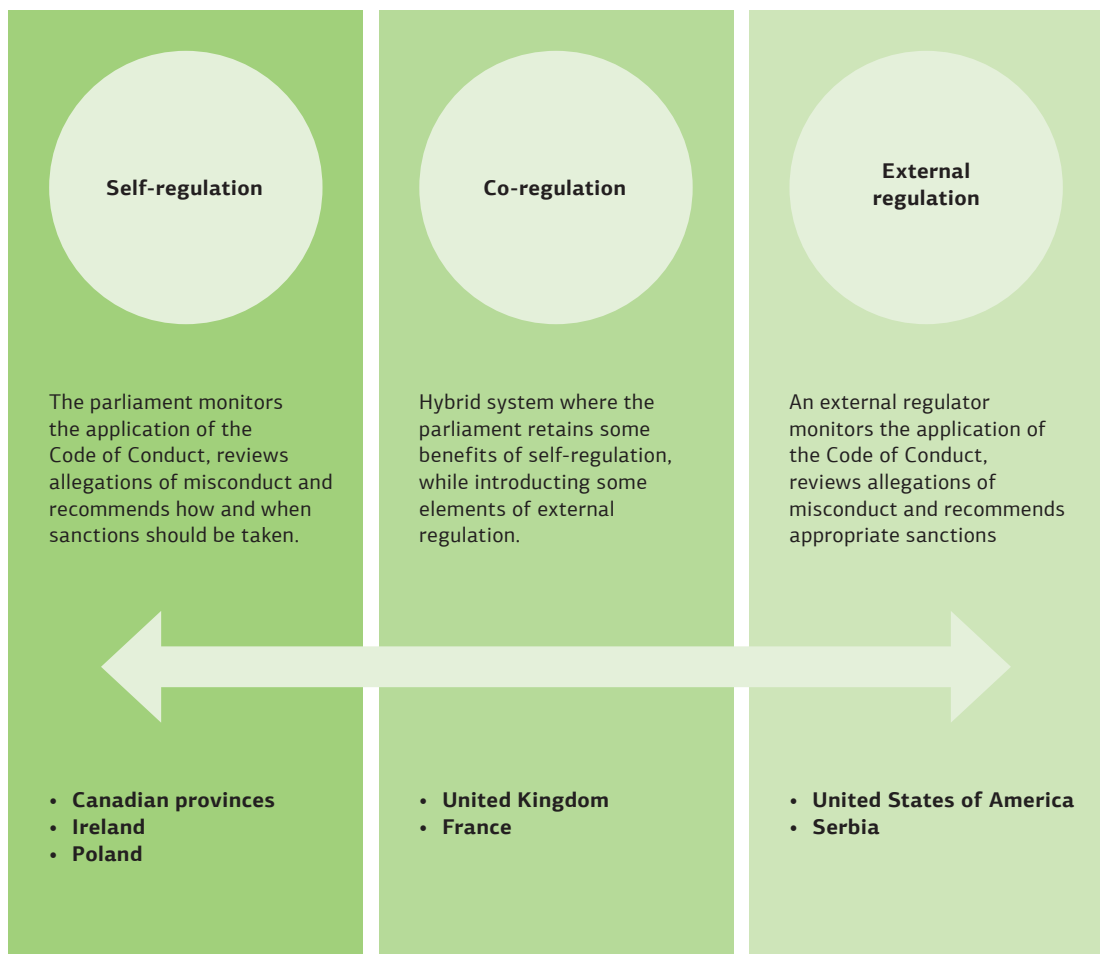
¹⁴³ House of Commons, "Power of the Parliamentary Commissioner for Standards to initiate investigations", 2010, <<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmstnprv/578/57803.htm>>. Also House of Commons, Commissioner for Standards, "Procedural Note: Procedure for Inquiries", 2012, <http://www.parliament.uk/documents/documents/Procedural_Note-April_2012.pdf>.

¹⁴⁴ Complaints do not always merit an inquiry. Between April 2011 and March 2012, the United Kingdom Commissioner for Standards received 109 complaints in total, but 101 of those were not inquired into because they fell outside the remit of the office, did not concern a breach of the rules, duplicated a previous complaint, or provided insufficient supporting evidence.. Data available here: <<http://www.parliament.uk/documents/MAR%202012%20received%20and%20inquired%20into.pdf>>.

- If the institutions are external to parliament, what is their relationship to parliament, e.g., are they appointed by parliament or accountable to parliament, or are they truly independent?

In a self-regulating system, parliament maintains control over how and when it sanctions its members, with either the speaker or a dedicated internal ethics committee taking responsibility for disciplinary matters.¹⁴⁵ Historically, self-regulation has been preferred in many democratic systems because of similar concerns to those that inspired the institution of parliamentary immunity. It was thought that parliament could only be truly free to scrutinize and criticize other institutions of the state if it was regulated only by itself.

Figure 9. Who monitors compliance and enforces rules?



¹⁴⁵ OECD Asset Declarations, *op. cit.*, note 9, pp. 36–37.

Many OSCE participating States have established standing committees within parliament with a mandate to investigate and adjudicate issues relating to conduct, including Greece, Estonia, Poland, the Former Yugoslav Republic of Macedonia, Slovakia and Slovenia. Most recently, in January 2012, the State Duma in Russia approved a resolution on a new Commission on Ethics for deputies.¹⁴⁶ Another common solution is for the Speaker to be charged with regulating minor matters – pertaining to conduct in the chamber, the use of improper language or a failure to obey rules of procedure – while more serious ethical breaches are considered by a dedicated committee.¹⁴⁷ For example, the President of the Bundestag in Germany is empowered to investigate cases of failure to declare interests. He or she then presents the investigation to the Bundestag for further action.

Self-regulation may be desirable in a system where the executive has a tendency to dominate parliament. However, it can only work if the public trusts parliament to regulate itself, despite the inherent conflict of interest. Those institutions within parliament that are responsible for regulating conduct must be willing to scrutinize the conduct of their colleagues or their colleagues' staff,¹⁴⁸ and must be able to do so in a non-partisan manner.¹⁴⁹

The OECD recommends that self-regulation should be accompanied by “real transparency” and “long-term democratic practices of free and fair elections.”¹⁵⁰ This strongly implies that pure self-regulation can only be effective and inspire confidence in the context of a stable, consolidated democratic tradition, with a transparent register of interests, a trusted electoral system and – arguably – free media that play a role in bringing instances of misconduct to light. However, serious scandals have recently prompted a move away from self-regulation in several countries.

The OSCE Parliamentary Assembly also appears to be moving towards a preference for external regulatory bodies. In 2006, the Assembly recommended that participating States establish an “office of public standards to which complaints about violations of standards by parliamentarians and their staff may be made” and that the institution should be specially designed to receive complaints of suspected violations.¹⁵¹ This institution might specialize in parliamentary conduct, such as the United States Office of Congressional Ethics, or might be a generalized anti-corruption agency upholding standards in all areas of public office.¹⁵² The OECD has also argued that, on the specific issue of enforcing the rules regarding asset declarations, special-

146 The official website of the State Duma provides only the structure and the regulation of such a Commission, here: <<http://www.duma.gov.ru/structure/committees/136161/>>. Moreover, it is not clear exactly which “rules and regulations” the Commission is intended to enforce. Some reports suggest that a draft Code of Ethics for deputies of the State Duma is in circulation, but it does not appear to have been approved as yet. A Code of Ethics and Conduct for Federal State Servants was adopted in March 2011, but the text is not available. See: <<http://www.gazeta.ru/parliament/info/laws/12832.shtml>> and <http://www.ng.ru/style/2011-04-05/16_duma_codex.html>.

147 The President of the Bundestag in Germany is also empowered to investigate cases of failure to declare interests. He or she then presents the investigation to the Bundestag for further action.

148 Thompson, Dennis F., *Political Ethics and Public Office* (Cambridge: Harvard University Press, 1987), cited in National Democratic Institute, “Legislative Ethics: a Comparative Analysis”, Legislative Research Series Paper #4, Washington DC, 1999, p. 20, <http://www.accessdemocracy.org/files/o26_www_legethics.pdf>.

149 WFD-GOPAC, *op. cit.*, note 97, p. 31.

150 OECD Asset Declarations, *op. cit.*, note 9, pp.13–14.

151 OSCE PA, *op. cit.*, note 5, p. 34.

152 In Serbia, the Anti-Corruption Agency is responsible for regulating conflict of interest issues for public officials, including those pertaining to MPs. The Agency's Head, Zorana Markovic, is keen to emphasise that the ACA does not make the rules, but rather implements rules made elsewhere. As she put it during an OSCE conference on parliamentary ethics and conduct, in Belgrade on 24 and 25 November 2011, “the Anti-Corruption Agency shouldn't decide whether MPs can be mayors or not, but it is an issue which should be regulated.”

ized, centralized bodies are more suitable for emerging democracies because they facilitate greater systematization and professionalization.¹⁵³

External regulators may be seen as more legitimate than self-regulation, but a question still remains as to whom the external regulators should be accountable. If such a body reports to the executive branch or, indeed, if it has judicial powers, this threatens to undermine the separation of powers and interfere with parliamentary sovereignty. Vesting power in a purely external regulator might also discourage MPs from taking responsibility for their own conduct. The WFD-GOPAC Handbook argues that, in a system of purely external regulation, “there is little sense of ownership of the provisions of the principles or rules amongst parliamentarians.”¹⁵⁴

One way to retain some of the benefits of self-regulation, whilst introducing enough external regulation to inspire public confidence, is to opt for a hybrid system where some elements of the process are carried out by parliamentary bodies – whether the Speaker, a dedicated standing committee, or an ad hoc committee convened to investigate a particular case – and other elements are external. For example, the United Kingdom has an internal standing committee, the Committee on Standards and Privileges, as well as an external commissioner, the Standards Commissioner. Complaints are initially made to the Commissioner, who then conducts an investigation and reports his or her findings to the Committee. This separation of the functions of investigation and adjudication is also in line with the right to a fair trial.

“We have a committee where we make decisions on penalties to bring against our colleagues. Investigations are performed in a separate, different place, but we make decisions on what should happen with some members of parliament. It is unpleasant, but necessary if we want to ensure that the public has greater confidence in our legislative body than it has now.” (Kevin Barron MP, United Kingdom)

Comments made during an OSCE Conference: Standards of Ethics and Conduct for Parliamentarians in Belgrade, November 2011.

However, although the investigation is conducted externally, the United Kingdom Parliament retains control over the process in several ways. First, Parliament appoints the Commissioner. The Commissioner thus owes his or her position to the House of Commons, which might arguably sway his or her decision. Second, the Commissioner reports his or her findings to the Committee, and it is only the Committee that can then report those to the House and recommend sanctions. Third, the Committee can disregard or simply note the Commissioner’s findings and conduct its own investigation. Thus, the prerogative is still firmly held by Parliament.

¹⁵³ OECD Asset Declarations, *op. cit.*, note 9, p. 14.

¹⁵⁴ WFD-GOPAC, *op. cit.*, note 96, p. 31.

The mandate of France's Commissioner for Ethical Standards

The National Assembly of France has recently appointed its first independent “*déontologue*” – or Commissioner for Ethical Standards – charged with ensuring respect of the principles set out in the National Assembly’s Deputies’ Deontology Code. The Commissioner is appointed by the Bureau of the National Assembly, the leading executive body of the chamber, consisting of the President of the Assembly, six vice-presidents, three quaestors and 12 secretaries, and requires three-fifths of the vote of the Bureau, plus the support of at least one opposition party.¹⁵⁵

The Commissioner is mandated to:

- collect and keep MPs’ declarations of interest;
- confidentially advise and consult any MP on the principles in the Code; and
- prepare an annual report to the National Assembly providing recommendations on how the code could be better implemented and respected.

The Commissioner may also be tasked with occasional “general studies” on ethics issues. He or she is also obliged to maintain confidentiality and forbidden from sharing information obtained, under penalty of prosecution under the criminal code.

The United States has also moved away from self-regulation in recent years. Oversight of the code of conduct used to rest wholly with the legislature, through a Committee of Ethics (or Committee on Standards of Official Conduct), comprised of ten legislators. The committee members acted as monitors and could recommend appropriate sanctions, although the final vote on sanctions was referred to Congress in plenary session. However, in 2008, an independent and non-partisan watchdog agency called the Office of Congressional Ethics (OCE) was created. The OCE is governed by eight members, all of whom are private citizens; serving members of Congress are excluded from holding positions on the board. The OCE is tasked with investigating allegations of misconduct and, if they find “substantial reason to believe the allegations”, can refer the matter to the Standards Committee in the House.¹⁵⁶

In order to gain and maintain legitimacy, the composition of parliamentary ethics committees should be representative of parliament in terms of political party balance and gender and ethnic balance, and members should be appointed to the committee in a transparent and fair manner. One new initiative in the United Kingdom is to appoint members of the public, or “lay members”, to the Standards and Privileges Committee.¹⁵⁷ This would go some way to addressing concerns that self-regulation is prone to an inherent conflict of interest, as well as to complaints that Parliament is sometimes remote and out of touch with public expecta-

¹⁵⁵ The deontologist, Deontology Code and Declaration of interests were established by a decision of the Bureau of the National Assembly on 6 April 2011. Details here: <http://www.assemblee-nationale.fr/presidence/presse/decision_bureau_deontologie.pdf>.

¹⁵⁶ See <<http://oce.house.gov/about.html>> and <<http://oce.house.gov/process.html>> for detailed explanations of the process.

¹⁵⁷ This was debated by the House of Commons in December 2010 and March 2012, with the government accepting the inclusion of two or three lay members on a newly constituted Standards Committee. See United Kingdom House of Commons’ Debates, 12 March 2012, columns 69–84, <<http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120312/debtext/120312-0002.htm#12031239000001>>.

tions. However, it also raises questions about how to appoint such members, what skills are necessary and what the status of interventions by these members would be, particularly given sensitivity over confidentiality and immunity.

The chair of such a committee should also command the confidence of the entire parliament. Such committees are often chaired by a member of the opposition, although this can be controversial in societies with a highly adversarial political culture or divided political elite. In the Polish Sejm, the need for impartiality is addressed by rotating the chairmanship and deputy chairmanship of the Ethics Committee every three months among the committee's members.

"It is a very difficult and onerous task to try to be the internal watchdog of standards in the House. It is also a great privilege. None of the five members would set himself up as a paragon when sitting in judgment of anyone else."
Brendan Howlin TD (during the Irish Dail debate on the Code of Conduct, 28 February 2002)

Safeguards during an investigation

The complaints process deals with highly sensitive matters; the entities and individuals in charge of this process should bear in mind the potential damage the process can cause to the reputations or careers of those involved. Allegations of misconduct might destroy the career of an opponent, even if there turns out to be no foundation for the complaint. It is, therefore, important to uphold the rights of the accused. An MP should be informed within a certain period if a complaint is lodged against him or her and should be given time to respond before a preliminary investigation commences. Individual MPs should be able to seek legal advice, to defend their actions, and to engage in a right to appeal, but careful consideration should be given to how to do this. In Germany, an individual can provide arguments in his or her defence only in writing. If allowed a platform, there is a risk that an individual will use it to attract media publicity for their original comments or behaviour.

Rules regarding the disclosure of complaints also need to take into account the rights of MPs. If complaints are disclosed immediately, before an investigation has taken place to establish whether it can be substantiated, there is a risk that complaints could be used as a political tool, to smear a member and ruin his or her career, even if the allegations are unjustified. An alternative is to publish reports on complaints only once a decision has been made. A third option is to publish details of complaints only if the investigation reveals that they are substantiated (but only if there is no higher instance for appeal), or only for certain less serious alleged infringements. One expert on parliamentary standards in the United Kingdom recalled that, when the House of Commons first introduced a procedure for making complaints to the Commissioner for Standards, the system was initially abused with "tit-for-tat" claims by MPs from opposing parties seeking to smear one another. Partly as a result, it was decided that the Commissioner should only issue a report on an investigation if substantive evidence of misconduct had been found.¹⁵⁸

There is also a risk that the person about whom a complaint is made could retaliate against the complainant. There might, therefore, be a need to protect complainants by granting them anonymity. However, that might, in turn, make the process more vulnerable to smears and politicized accusations, by reducing the cost of making unjustified complaints. Drafters of rules

¹⁵⁸ Information provided in an anonymous interview conducted for this report.

on parliamentary conduct should also consider that rulings on misconduct might provoke complaints from parliamentary groups, potentially leading to cases filed before domestic tribunals, and eventually even the European Court of Human Rights.

In cases where misconduct is found to have occurred, public disclosure is often regarded as an important component of accountability – as well as a potential sanction. Disclosure allows voters to judge the facts of a case and decide whether or not to support a candidate in the future, and the threat of losing one’s seat may act as a powerful deterrent to misconduct for members.¹⁵⁹ Transparent procedures also help to build confidence in the system for regulating parliamentary standards.

Protecting the rights of MPs affected by complaints

The Polish example

The Polish Sejm Ethics Committee is required, according to the regulations of the Polish Sejm Ethics Committee of 23 April 2009, to:

- share complaints immediately with members of the Committee and also with the MP(s) affected by the complaint, typically those about whom the complaint was made;
- inform those who have submitted a complaint whether or not the Committee will take up the matter;
- inform the Deputy who is the object of the complaint as to the time and place when the Committee shall consider the matter; and
- inform the object of a complaint if it decides to dismiss a matter.

Moreover, the Deputy about whom the complaint is made has the right to present to the Committee his or her verbal clarifications regarding the matter. In case of doubts regarding his or her asset declarations, the Deputy may be called upon to present written or oral clarifications in 30 days.

The United Kingdom example

In the United Kingdom, the *Joint Committee on Parliamentary Privilege* has issued guidance on dealing with cases where very serious allegations have been made:

“In dealing with especially serious cases, we consider it is essential that committees of both Houses should follow procedures providing safeguards at least as rigorous as those applied in the courts and professional disciplinary bodies. At this level the minimum requirements of fairness are for the member who is accused to be given:

- *a prompt and clear statement of the precise allegations against the member;*
- *adequate opportunity to take legal advice and have legal assistance throughout;*
- *the opportunity to be heard in person;*
- *the opportunity to call relevant witnesses at the appropriate time;*
- *the opportunity to examine other witnesses; and*
- *the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence.*

¹⁵⁹ WFD-GOPAC, *op. cit.*, note 97.

In determining a member's guilt or innocence, the criterion applied at all stages should be at least that the allegation is proved on the balance of probabilities. In the case of more serious charges, a higher standard of proof may be appropriate.”¹⁶⁰

Enforcement of rules on interest and assets

Many commentators argue that Registers of Interests and Asset Declarations can only play an effective role in reducing conflicts of interest if there are strong mechanisms in place to make the submission of declarations mandatory and to verify that the information provided is correct. Although many countries require the submission of asset declarations by law, in practice, this is not always enforced and the institutions for checking submissions are often weak. The institutions responsible for receiving and checking the asset declarations of high-level officials sometimes lack the capacity to check submissions.¹⁶¹

Some argue that asset declarations will only be taken seriously if accompanied by the legal right to verify declarations and the institutional capacity to carry out investigations. In Greece and Romania, for example, information provided in asset declarations can be verified against tax returns. In Romania, asset declarations – which are required for a very large group of public officials including MPs and local elected representatives – can also be verified with reference to the land registry, motor vehicle registry, real estate registry and other property registries.¹⁶²

3.3 Penalties for Misconduct

Sanctions are integral to meaningful regulation and to the overall legitimacy of a parliamentary regulation system, but different types of penalty are appropriate for different constitutional contexts. For the European Parliament, for example, strict enforcement and punishment of misconduct are not possible, because legal action can only be taken in the home state and, moreover, national legal conditions vary widely. Thus, as one MEP stated, “the public sanction by electors is the biggest sanction available”.¹⁶³

In most OSCE participating States, systems of parliamentary discipline include a wide range of sanctions, from the relatively soft “naming and shaming”, through fines and temporary suspensions from office (with loss of pay), up to the ultimate political sanction of loss of a parliamentary seat. For conduct that breaks the law, there are, of course, legally enforced penalties. Many of the weaker penalties can be seen as “reputational”, in that they largely affect the individual’s standing and reputation with his or her peers and the public. Such measures have traditionally been preferred in many OSCE participating States, in the form of a warning, public announcement or “call to order”.

The severity of the punishment should vary according to the severity of the offence and the number of infractions. Criminal procedures might run in parallel to disciplinary procedures in

¹⁶⁰ House of Commons, Joint Committee on Parliamentary Privilege, “First Report”, para. 281, 1999, <<http://www.publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4302.htm>>.

¹⁶¹ Transparency International, “EU Anti-Corruption Requirements: Measuring Progress in Albania, Kosovo, FYR Macedonia and Turkey”, 2011, <[http://www.acrc.org.ua/assets/files/zvity_ta_doslidzhennya/CIMAP_For%20Web\[1\].pdf](http://www.acrc.org.ua/assets/files/zvity_ta_doslidzhennya/CIMAP_For%20Web[1].pdf)>.

¹⁶² This requires, however, that property registries are reliable.

¹⁶³ Interview with MEP for this report, by telephone, 13 October 2011.

severe cases, or may be initiated if the regular disciplinary process uncovers evidence of a possible criminal offence. Approaches vary throughout the OSCE region. For example:

- In France, the weakest disciplinary sanction is a “call to order”, followed by many levels of tougher sanctions, including cuts in salary graded according to the severity of the offence, and temporary suspension for members who are censured twice or insult other dignitaries, such as the Prime Minister or members of the Government. The rules allow for defence in person by the MP facing the disciplinary measure;
- In Poland, if the Sejm Ethics Committee finds that a Deputy has violated the Code of Ethics, it may impose a warning, a rebuke or a reprimand.¹⁶⁴ The deputy in question is informed in writing. If he or she does not immediately register an appeal, or if an appeal has been dismissed, the resolution of the Committee is published in the official gazette; and
- In the German Bundestag, a member who breaches the rules of procedure during debates may be called to order, be “named” by the President, or have his or her right to speak during a particular debate withdrawn. For more severe violations, an MP might be excluded temporarily from debates, or fined up to 2,000 euros. Similarly, a scale of disciplinary measures exists for infractions of the Bundestag’s rules on declaring interests: from a simple warning to a fine of up to six months’ remuneration.¹⁶⁵

For breaches of rules relating to asset declarations, the full range of sanctions exists within the OSCE region. In Italy, not submitting one’s declaration of interests can result in criminal action, while in Georgia, submitting an *incomplete* asset declaration is a crime.¹⁶⁶ However, in the United Kingdom, Members who fail to declare their interests are normally only required to apologize before the House of Commons. In Sweden, individuals are simply named in the plenary session.

Owing to the special status of members of parliament and the constitutional protection that they enjoy, the imposition of severe sanctions is a sensitive issue.¹⁶⁷ For example, temporary suspension from the chamber, while relatively common, interferes with MPs’ abilities to represent the electorate as a whole, or their constituency specifically.¹⁶⁸ There is a risk that suspension could be abused to banish MPs from the chamber in order to distort the natural majority. Thus, in some countries, such as Austria, suspended members retain their right to vote. Moreover, research suggests that more severe sanctions are no more likely to inspire public trust; according to Willa Bruce, the existence of a code of conduct is more effective in building public confidence.¹⁶⁹

There is a strong norm against removing parliamentarians from office unless very serious offences have been committed. The OSCE’s Copenhagen Document on the Human Dimension (1990) recommends that:

¹⁶⁴ According to Article 4.6 of the Regulations of the Ethics Committee of 23 April 2009.

¹⁶⁵ German Parliament, “Rules of Procedure of the German Bundestag”, <http://www.bundestag.de/dokumente/rechtsgrundlagen/go_btg/goo6.html>. Also see German Parliament, “Law on Members of the Bundestag and the European Parliament”, <<http://www.bundestag.de/dokumente/rechtsgrundlagen/abggges.pdf>>.

¹⁶⁶ OECD Asset Declarations, *op. cit.*, note 9, p. 81.

¹⁶⁷ *Ibid.*, p.16.

¹⁶⁸ MPs can be temporarily suspended from the chamber, *inter alia*, in Bulgaria, Canada, Denmark, Greece, Finland, Ireland, Italy and Romania. It is often the preserve of the Speaker to decide on such temporary suspensions.

¹⁶⁹ Bruce, Willa. “Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government”, *Public Integrity Annual*, CSG & ASPA (1996), cited in Stapenhurst, Frederick and Pelizzo, Riccardo, “Legislative Ethics and Codes of Conduct”, *WBI Working Papers*, 2004, Washington DC: World Bank Institute, p. 14.

“Candidates who obtain the necessary number of votes [...] are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.”¹⁷⁰

The United Kingdom is currently debating proposals for introducing a system of “recall” for MPs, whereby an MP’s constituency can vote to withdraw his or her mandate. This is provided for in the United States, Canada and a number of regional and local assemblies around the world¹⁷¹ However, research suggests that such mechanisms are frequently used for party political purposes and may become normalized as “standard tool-kit of political conflict” rather than being used only as extraordinary measures.¹⁷²

Within a system, the procedures for escalating from softer to tougher measures should be transparent, and the most severe sanctions should be reserved only for grave violations. The Council of Europe Committee of Ministers and the ODIHR/Venice Commission Guidelines on Political Party Regulation recommend that sanctions should be “effective, proportionate and dissuasive”.¹⁷³ Moreover, the aim of regulation should be primarily constructive, to create conditions in which professional and ethical conduct emerges as a norm. With this in mind, leniency should be exercised in imposing sanctions on any new area of regulation, to allow members to become accustomed to new procedures. In Latvia, in the first year that asset declarations were introduced, nearly 20 per cent of all forms submitted were incomplete.¹⁷⁴ Regulatory bodies should also be mandated with responsibilities to guide and educate, in addition to their disciplinary role.

3.4 Administrative Costs

It is difficult to quantify the costs of regulating parliamentary standards, since many different agencies are likely to be involved, but the staffing and budgetary costs should be borne in mind when designing a regulatory system. Data are available on the costs of some dedicated parliamentary ethics institutions in the OSCE region. For example, in 2007 the total cost of the Senate Ethics Officer of Canada amounted to 1,037,370 Canadian dollars (approximately 800,000 euros), of which 85 per cent represented salaries and employee benefits.¹⁷⁵ The office of the United Kingdom Commissioner for Standards, the quasi-independent regulator of the conduct of British MPs, cost the taxpayer £598,304 (approximately 717,000 euros) in 2010 and 2011, of which 97.5

¹⁷⁰ OSCE, “Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE” (1990), Paragraph 7.9, <<http://www.osce.org/odihr/elections/14304>>.

¹⁷¹ Judge, David, “Recall of MPs in the UK: ‘If I Were You I Wouldn’t Start from Here’”, *Parliamentary Affairs*, May 2012.

¹⁷² Gilbert, C., “State Recall Movement Stands Alone in US History”, *Journal Sentinel*, 2011; and Jackson, D., E. Thompson and G. Williams, “Recall Elections for New South Wales? Report of the Panel of Constitutional Experts”, Sydney, NSW Department of Premier and Cabinet, 2011, p.22.

¹⁷³ *Guidelines on Political Party Regulation* (Warsaw: ODIHR, 2010), p. 80, <<http://www.osce.org/odihr/77812>>.

¹⁷⁴ *Ibid.*, p. 83.

¹⁷⁵ Canadian Senate, Ethic Officer, “Annual Report of the Senate Ethics Officer 2006–2007”, 2007, Appendix D, <<http://sen.parl.gc.ca/se0-cse/PDF/AnnualRepo607-e.pdf>>.

per cent represented staffing costs.¹⁷⁶ The United Kingdom Commissioner operates with two senior members of staff and five to eight support staff, depending on the volume of complaints.¹⁷⁷

The printing of materials can also be very costly, and careful consideration should be given to whether it is necessary or whether online publication allows adequate scrutiny. In the United Kingdom, almost all of the non-staff costs of the Commissioner are printing costs, with the annual printing of the Register of Members' Financial Interests alone accounting for around £8,000 (approx. 9,590 euros). The Register is, in any case, permanently available online and updated continuously, meaning that the printed version quickly becomes out of date.

The resources available to an ethics committee or regulator of conduct are essential to how well it can fulfil its role and can also affect its independence. The budget of any dedicated agency should be stable and secure, to allow maximum independence, but there should also be potential for the agency to request additional public resources in periods where an unusually high number of investigations are required, e.g., when major or systematic abuses are revealed.

3.5 Encouraging Compliance

It is important to provide training on the new rules when a system is launched and to continuously refresh training so as to keep it in the minds of individuals as they encounter new problems. This training should be aimed at all groups that will be regulated by the system, as well as at stakeholders who are expected to play a role in scrutinizing conduct, such as the media, NGOs and the wider public. Parliamentary staff should also be trained upon beginning their employment, because they will need to ensure that systems are set up appropriately and will be responsible for day-to-day compliance.

All new MPs should undergo an adequate induction programme when they are elected to parliament. Parliamentarians tend to come from a wide variety of backgrounds and may have been socialized in the ethical norms of their former professions, not necessarily those of the parliament. The first weeks in parliament are a very busy time for most new MPs, but it is important that they think about the public's expectations of how they should conduct themselves in their new role. Ethics training should demonstrate why misconduct undermines the legitimacy of democratic regimes, as well as clarifying what counts as misconduct and identifying ways to eliminate it.¹⁷⁸

It can be helpful if an experienced member holds a mentoring session in the chamber, in which he or she discusses his or her own experience of entering parliament and the ethical dilemmas that have arisen over the years. Such sessions work well if the individual is a respected and

¹⁷⁶ This represents only 0.3 per cent of the total budget of the House of Commons. Data compiled from United Kingdom House of Lords, "Annual Report 2010–11, Commissioner for Standards", 2011, p. 35, <<http://www.parliament.uk/documents/lords-commissioner-for-standards/Annual-Report-2010-11.pdf>>. House of Commons, "Thirty-Third Report of the Commission, and annual report of the Administration Estimate Audit Committee, Financial Year 2010/11", 2011, <<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcomm/1439/1439.pdf>>.

¹⁷⁷ In 2010 and 2011, the United Kingdom Commissioner was running concurrent inquiries into 37 complaints, 25 rolled over from the previous year and 12 new ones. In addition, there are costs associated with the operations of the Committee on Standards and Privileges, which has one senior member of staff and one administrative assistant. Information is not available on the costs of operating the Committee on Standards and Privileges itself; some costs are printed in the sectional return.

¹⁷⁸ Stapenhurst, Frederick and Pelizzo, Riccardo, "Legislative Ethics and Codes of Conduct", *WBI Working Papers*, 2004, Washington DC: World Bank Institute, p. 17.

charismatic speaker, although care should be taken to ensure that any advice given is in line with the latest recommendations and rules. A recent report by the Dutch Parliament emphasizes the benefits of mentorship:

*“The written and unwritten rules of the political game cannot be learned in just a few months. However, personal support can make a huge difference to a new MP. Experienced MPs, both former and current, are often willing to coach new MPs or to share their experiences with them. Their contribution also enriches the collective memory of the House of Representatives.”*¹⁷⁹

In addition to training sessions, information can be made available on the internal parliament “intranet”. This has the advantage that MPs can access the site when it is convenient to them and can find answers to “frequently asked questions”.

Keeping it current: The case of Georgia¹⁸⁰

Georgia’s experience provides an important lesson on the need to ensure that a code of conduct does not just gather dust on a shelf. Georgia’s Parliament developed a “Code of Ethics” in the summer of 2004, at the suggestion of Transparency International Georgia. Parliamentary Chairwoman Nino Burjanadze welcomed the initiative and designated the Head of the Legal Issues Committee to facilitate the elaboration of the code with Transparency International Georgia. A five-member working group that included all factions in parliament was also set up. After intensive discussions and consultations within the working group, as well as with NGO representatives, the MPs adopted the code as a general and non-binding declaration in October 2004. Most MPs signed the text publicly at a ceremony, while those who could not attend signed it privately some days later.

However, despite this promising start, the code was not actively used and, when a cohort of new MPs was elected in 2008, they were not asked to sign the code. It seems that the code may even have been void after the 2008 elections, and research certainly suggests that few MPs were aware of the code by then.¹⁸¹ Moreover, the code’s existence has not prevented ethical problems from arising, or provided a means to discipline MPs when problems have occurred.

The code might have been more effective if it had been included in the Parliamentary Rules of Procedure or if an Office of Ethics Ombudsman had been established in parliament – two proposals which were made during the drafting process. Some MPs argue that the code was forgotten because it was only declaratory and non-binding, while other measures to regulate parliamentary ethics did exist and were enshrined in law. Indeed, Georgia’s Parliamentary Rules of Procedure have detailed provisions about MPs’ behaviour, and are backed up by a monitoring and enforcement mechanism to ensure compliance. Nevertheless, the 2004 Code of Ethics was not fully taken on board by the incoming Parliament in 2008. The Georgian Parliament is currently considering how to revive or re-write the code.

¹⁷⁹ Dutch House of Representatives, “Confidence and Self-Confidence – Parliamentary Self-Reflection: Findings and Follow-up”, 2009, p. 22, <http://www.houseofrepresentatives.nl/sites/www.houseofrepresentatives.nl/files/content/parliamentary-selfreflection_finalreport_117-200327.pdf>.

¹⁸⁰ This box is based on the account provided in Transparency International Georgia, Gogidze, Lasha, “Case Study: the Georgian Parliament’s Code of Ethics – Implementation and Recommendations for Reform”, 2012, <<http://transparency.ge/en/post/report/georgias-parliamentary-code-ethics-need-reformation>>.

¹⁸¹ *Ibid.*

Some systems also offer an ongoing advisory service for parliamentarians. The Canadian Conflict of Interests and Ethics Commissioner is mandated with providing confidential advice to MPs on how to comply with the 2006 Conflict of Interest Act and the MP Code of Conduct, in addition to his or her duties of inquiry into breaches of these rules. The Commissioner is also mandated with providing confidential information to the Prime Minister regarding conflict of interest and ethical issues.¹⁸² The Irish Standards in Public Offices Commission is similarly tasked with providing guidance on compliance.¹⁸³

In some systems, MPs are *required* to seek advice. German Bundestag members are obliged to seek information “in cases of doubt” regarding their duties.¹⁸⁴ Alternatively, MPs can simply be offered an opportunity to seek advice, or encouraged to do so. The body that provides advice might also play a role in reviewing the provisions of the code on a regular basis; it is in a good position to assess which areas of the code are unclear to members, or which areas of compliance are most problematic. However, individuals may feel uncomfortable about asking for advice from a body that has the power to investigate their conduct and enforce the rules. Freedom of information laws can also inhibit MPs from asking questions, if they fear that their questions will later be published in the media.

General information about the regulatory framework should be made available to the public in easily understandable and accessible forms.¹⁸⁵ Moreover, discussions of ethical dilemmas and of any changes to the rules should be integrated into parliament’s regular educational and outreach activities with the public, civil society, students and the media. Moreover, such activities help to make the public aware of what an MP’s role entails.

Latvia: Providus NGO puts pressure on MPs to comply with code

In Latvia, in 2004, at the request of parliament, the Centre for Public Policy Providus submitted a proposal for a draft code of conduct. Although not all of Providus’s proposals were included in the final document,¹⁸⁶ the NGO has continued to play an important role in monitoring compliance with the code. Its 2007 report, based on monitoring parliamentary debates that year, found that:

“MPs continued using language that contradicts Clauses 7 and 8 of the Code of Ethics for Members of the Saeima [on parliamentary language and non-discrimination]. Multiple violations of these clauses by deputies have taken place during plenary sessions. Most breaches of the Code can be divided into three categories: the use of vulgarisms to discredit an opponent’s statement, the use of biased language or biased (prejudiced) statements for the same purpose, and, finally, the use of personal offences towards other speakers.”¹⁸⁷

182 Canadian Parliament, “The Conflict of Interest and Ethics Commissioner”, 2007, <<http://www.parl.gc.ca/content/LOP/ResearchPublications/prbo559-e.pdf>>.

183 Irish Parliament, Standards in Public Offices Commission, “Function of the Standards in Public Office Commission”, <<http://www.sipo.gov.ie/en/AboutUs/Functions/>>.

184 German Bundestag, “Rules of Procedure of the German Bundestag”, 2009, p. 85, <<https://www.btg-bestellservice.de/pdf/80060000.pdf>>.

185 For example, the United Kingdom Parliament has recently published a new leaflet for the public on complaining about an MP. United Kingdom House of Commons, “Complaining about a member of the Parliament”, 2011, <<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/pcfs/publications/inquiries/complaints-process/>>.

186 Interview by telephone with Valts Kalnins, Centre for Public Policy-Providus, 17 February 2012.

187 Centre for Public Policy PROVIDUS and Open Society Institute, “Shrinking citizenship: Analytical Report on the Monitoring of Printed Media, Parliamentary Debates and Legislative Initiative concerning Civic Participation in Latvia”, 2007, <http://www.providus.lv/upload_file/Dokumenti_febo7/Tolerance/Shrink_Citi_Eng.doc>.

3.6 Updating and Reviewing Standards

Standards necessarily evolve and change over time as norms and expectations of parliamentarians change and new risks arise. Systems for regulating standards, therefore, need to be able to adapt.¹⁸⁸ A code is never a finished document, but rather remains a work in progress. One Canadian MP reflected that:

*“We wish to remind Senators of something that the Committee has been mindful of from the beginning: the Conflict of Interest Code for Senators is a work in progress. It is our Code, and only time and experience will tell if the choices reflected in this draft were the best possible.”*¹⁸⁹

Even in a system as old as the Westminster Parliament, there have been fundamental changes in the role of an MP in recent years. In the 1960s and 1970s, MPs with constituencies in the north of England or Scotland used to base themselves in London most of the time. Now it is expected that MPs spend every Friday and most weekends in their constituencies, even during parliamentary sessions. This has major implications, such as what constitutes an appropriate allowance for an MP for travel or accommodation. In countries that are undergoing transition or democratisation, it is particularly likely that the role of parliament may change in a short period. Such changes have implications for the questions of whether it is appropriate for MPs to hold other roles or earn income from other sources simultaneously with their legislative office.

These issues highlight the importance of having procedures in place that allow for regular review and monitoring of the framework. Reviews should provide for open discussion and consultation with stakeholders, and ensure that those who will be regulated feel they have ownership of the process.

Implementation questions to consider:

- What funding is available to support the regulation of standards?
 - Will training on the new system be developed for MPs and their staff?
 - Will confidential advice be available to MPs and their staff?
 - What are the most appropriate ways of informing the media, NGOs and the wider public about the rules?
 - How does the system allow for innovation and reform in its norms and application?
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¹⁸⁸ Even the Hippocratic Oath has been updated, with one version that is used widely today having been penned by Dr Louis Lasagna in 1964. See WGBH Educational Foundation, “The Hippocratic Oath: Modern Version”, 2001, <<http://www.pbs.org/wgbh/nova/body/hippocratic-oath-today.html>>.

¹⁸⁹ Third Report of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament, the Honourable Senator David Smith, former Chair, and the Honourable Senator John Lynch-Staunton, former Deputy Chair, May 11, 2005. Quoted in Canadian Senate, Ethics Officer, “Annual Report of the Senate Ethics Officer 2006–2007”, (Ottawa: 2007), p. 24, <<http://sen.parl.gc.ca/se0-cse/PDF/AnnualRepo607-e.pdf>>.

Conclusions

All parliaments in the OSCE region can benefit from reviewing and reforming the way that they regulate professional and ethical standards. As elected representatives, parliamentarians are the cornerstone of our democracies. Yet throughout the OSCE region, parliaments can lose credibility as a result of scandals, damaging public confidence in democratic institutions. That, in turn, hinders the work of the vast majority of MPs who behave professionally and ethically, and makes it more difficult to attract the best people into politics. Reviewing and reforming standards can help to restore trust in parliaments and raise the profile of the important work carried out by MPs. The reform of parliamentary standards provides an excellent opportunity for a public debate on what can and should be expected of the individuals voters elect to represent them.

Professional and ethical standards for parliamentarians are not a luxury. MPs have a demanding job and are frequently faced with competing claims on their time and power. They sometimes sacrifice a great deal in their personal lives in order to serve the public interest, and they operate in a highly politicized environment. Rules and regulations should empower MPs to carry out their work and to uphold the independence of parliament from other institutions. While rules should not intrude unnecessarily into MPs' private lives, they are instrumental in guarding against the abuse of power for political ends. To keep a working code from one election to another, a frequent review and reform of all the ethical standards needs to be sustained.

There are six steps on the road to reforming the regulation of parliamentary ethical standards:

- 1 Assess the existing rules and risks.** Reformers should first make themselves aware of the rules and norms that currently exist, drawing on the country's constitution and national laws, and informal norms operating in parliament. They should identify which problems are most severe and which risks the greatest, in order to be able to design reforms that reduce those risks. Reformers should also study the experiences of other countries in similar situations. Any working groups established to lead reform should be selected through a fair and transparent process, and should lead by example in making their work transparent and declaring their members' special interests, even beyond the requirements of the parliament.
- 2. Initiate a consultation with the aim of producing a document.** The reform of parliamentary standards should be founded on a wide consultation process, involving parliamentarians, parliamentary staff, political parties, the media and civil society. Broad consultation can help to establish what expectations people have about the conduct of MPs,

and spark a discussion on what it is reasonable to expect, possibly enhancing transparency and participation through on-line debates and forums. The consultation should be directed towards producing a document that sets out common values. The public consultation will help frame any subsequent changes to the rules or the institutions that enforce the rules.

3. Reform rules and ethical standards. Whenever steps 1 and 2 reveal weaknesses in the parliamentary ethical standard in force, a proper reform process should start within the parliament. The reform could touch several different areas, which include but are not limited to:

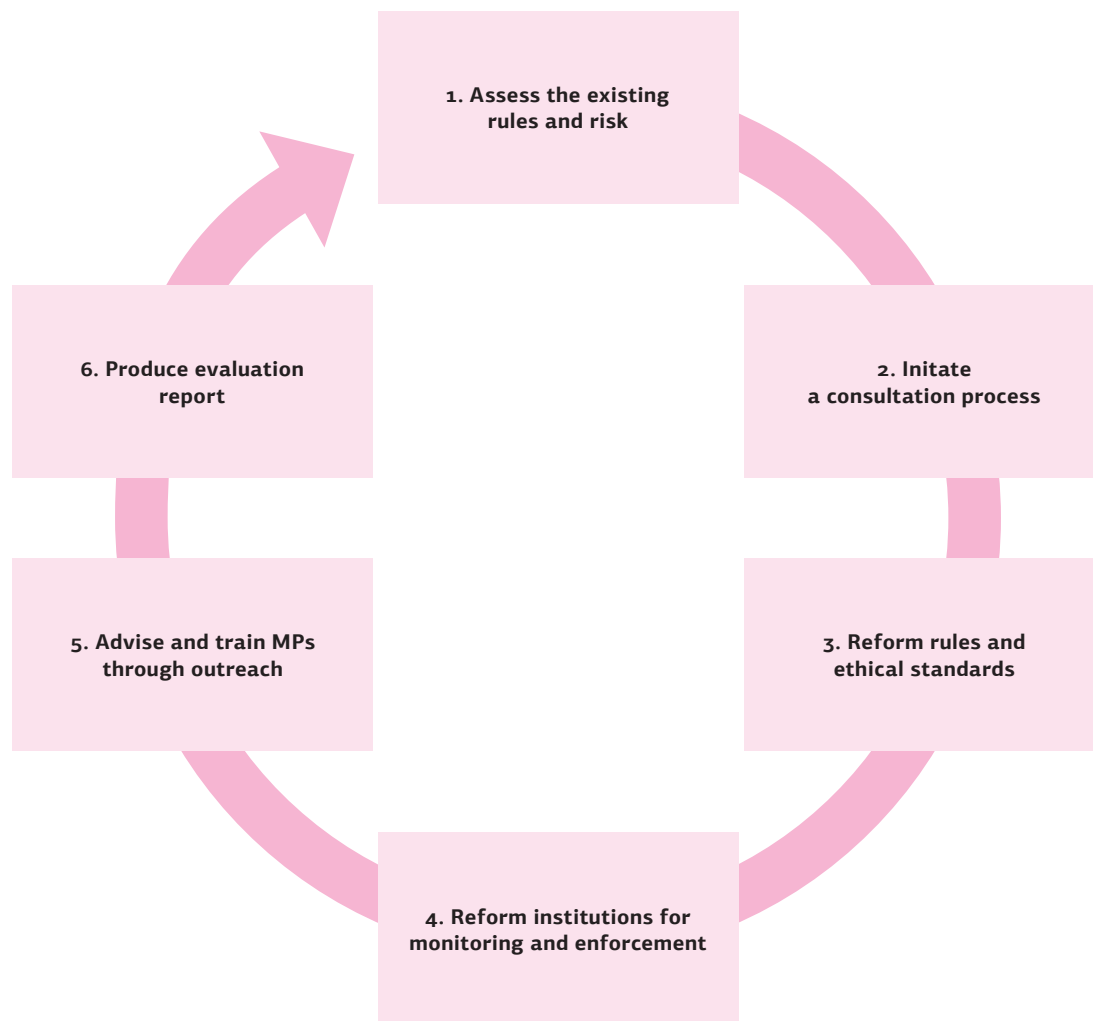
- Declarations of interests and assets;
- Allowances and expenses;
- Relations with lobbyists;
- Conduct in the chamber, including parliamentary language;
- Gender equality;
- Tolerance and non-discrimination;
- Attendance and voting rules;
- Use (and misuse) of parliamentary time; and
- Post-parliamentary employment.

4. Reform institutions for monitoring and enforcement. Institutions are needed to monitor adherence and investigate alleged misconduct. Depending on the weaknesses identified in steps one and two, these institutions should be reformed accordingly. Important decisions concern whether the monitoring and enforcement roles should be concentrated in parliament or in an external body (see Figure 9), and whether the existing institutions have enough power and independence to carry out their roles effectively.

5. Provide advice, training and support to MPs through outreach. MPs need constant advice on new or reformed parliamentary rules and standards throughout their time in office, and must receive periodic training on sensitive ethical issues. At the same time, the public, media and civil society need to be informed about parliamentary ethical standards or the reforms of previous rules. Indeed, this should garner close scrutiny of parliamentary and MPs' activities from the public regulatory community, ultimately fighting unethical conduct through prevention.

6. Produce evaluation reports. At the end of each parliamentary term, a thorough assessment of the ethical standards in place and their impact on MPs' political work is needed. The outcome should be published in a report and comparative analysis should be conducted using previous assessments.

This review and reform process should be repeated on a regular basis. Since expectations about how MPs should behave change over time and new challenges arise, there should be frequent and systematic reviews of the rules and their enforcement. Ideally, it should become part of a parliament's responsibility to review standards at the beginning of each parliamentary term to implement them throughout the legislative period. In addition, a comprehensive assessment report should be prepared and made available to the public at the end of each term, closing the cycle and giving the incoming cohort of MPs valuable information about where to start the subsequent review process (see Figure 10). In this way, the review of ethical standards will become institutionalized as an automatic task, which is necessary to keep a parliament functioning well and important for building public confidence.

Figure 10: Six steps to reforming parliamentary standards

Glossary¹⁹⁰

Abuse of office – when a public official uses powers associated with his or her privileged position to maintain a hold on power or to achieve private or partisan gains.

Appearance standard – the concept that conduct should not only be proper, but it should also appear proper, because the mere appearance of impropriety risks eroding public trust; often invoked when discussing potential conflicts of interest.

Asset declaration – statement detailing the assets (and, sometimes, liabilities) of an individual MP or other public official, usually submitted at the beginning and end of a parliamentary term.

Bribery – provision of a private benefit to an individual in order to influence him or her in the conduct of his or her duties, in such a way as to benefit the party paying the bribe (often at the expense of the public interest).

Code of conduct – statement of values, principles or rules to which members of a certain profession are expected to adhere or aspire.

Conflict of interest – conflict between the public duties and private interests of a public official, in which the public official has private interests that could improperly influence the performance of his or her official duties and responsibilities.

Constituency role – that part of an MP's work concerned with representing his or her "constituency", i.e., the voters in the region or locality that he or she represents, where the electoral system includes such constituencies.

Cooling-off period – time during which a former deputy is banned from taking on certain types of employment or engaging in activities, such as lobbying, to help ensure that he or she does not exploit his or her former contacts or insider information for private gain.

Corruption – abuse of entrusted power for private gain.

¹⁹⁰ This glossary was compiled with reference to definitions contained in the Transparency International "Plain Language Guide", the OECD (2011) publication, "Asset Declarations for Public Officials: A Tool to Prevent Corruption", the OSCE Aide-Memoire on Gender-Mainstreaming in Projects, <<http://www.osce.org/gender/26402>>, and the United Kingdom House of Commons online glossary, <<http://www.parliament.uk/site-information/glossary/>>.

Gender equality – absence of discrimination on the basis of gender in opportunities, in the allocation of resources or benefits, or in access to services; the full and equal exercise by men and women of their human rights.

Ghost voting – practice where an MP votes on behalf of an absent colleague, either with or without that colleague's consent.

Good governance – governance that is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law; assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making; responsive to the present and future needs of society.

Incompatibility laws – laws prohibiting an MP from holding a certain position simultaneous with being a deputy.

Induction – training programme for new MPs or new members of staff, to familiarize them with the institutions and rules.

Inviolability – known as parliamentary immunity, legislative inviolability is an absolute immunity from liability that is granted to legislators or parliamentarians during the course of their legislative mandate.

Lobby groups – interest groups that seek to influence the formation of legislation;

Misuse of public funds – use of public funds to achieve private or party political goals, rather than to serve the public interest.

Nepotism – occurs when an individual distributes jobs in public office or public contracts to relatives or friends.

Nolan Principles – set of seven principles to guide conduct in public life that were established by the United Kingdom Committee on Standards in Public Life in its first report in 1995; the principles are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

Public integrity – idea that individuals and institutions in public service should act in a way that is consistent with moral or ethical principles and standards.

Revolving door – movement of public officials and politicians between their public roles and employment in the private sector, in quick succession, creating a number of risks of conflict of interest.

Rule of law – existence of legal systems and structures that condition the actions of a government, and the principle of equality before the law.

Rules of procedure – rules about procedures for parliamentary debates, e.g., how to submit an amendment, how to ask a question.

Standing order – written rules under which a parliament conducts business that regulate the way members behave, bills are processed and debates are organised; some standing orders are temporary and only last until the end of a session or a parliament.

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